

1 COUNTY COURT OF THE STATE OF NEW YORK

2 COUNTY OF OSWEGO: CRIMINAL TERM:

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.  
94C-0161

5  
6 - against-

HEARING  
VOLUME 12

7 GARY THIBODEAU,

8 Defendant.

9 -----x

10 Oswego County Courthouse  
11 25 E. Oneida Street  
Oswego, NY 13126

12 DATE: March 27, 2015

13 B e f o r e:

14 HONORABLE DANIEL R. KING  
15 Acting County Court Judge

16 A p p e a r a n c e s:

17 GREGORY S. OAKES, ESQ.  
District Attorney, Oswego County  
18 MARK M. MOODY, ESQ.  
Chief Assistant District Attorney

19 OFFICE OF THE FEDERAL PUBLIC DEFENDER  
20 BY: LISA PEEBLES, ESQ., Public Defender  
RANDI JUDA BIANCO, ESQ., Assistant Public Defender  
21 Attorneys for Defendant

22 Defendant is not present

23  
24  
25 08:24:20

1                    I N D E X       T O       W I T N E S S E S  
2                               Direct   Cross   Redirect   Recross

3   FOR THE PEOPLE:

4	Donald Dodd	--	--	2018/2122	2044
5	Darcy Purdy	2131	2156	2159	2161
6	Dale Yager	2163	2176	--	--
7	Joseph Lisi	2182	2199	2205	2209
8	James Pietroski	2211	2223	2224	2226

9   FOR THE DEFENDANT:

10   None

11                    I N D E X       T O       E X H I B I T S  
12                               Identification       Evidence

13   FOR THE PEOPLE:

14	WWW. Answer	2020	2020
15	XXX. 2/3/95 letter	2021	2022
16	YYY. Typed/handwritten pages	2028	2031
17	ZZZ. Notepad with notes	2035	2038
18	AAAA. 5/26/94 letter	2125	--
19	BBBB. DA office papers	2128	--
20	CCCC. Marriage registry	2131	2140
21	DDDD. Address book	2131	--
22	EEEE. Catalog	2131	2146
23	FFFF. Vacation brochure	2131	2147
24	GGGG. Card	2131	2154
25	HHHH. Lead sheet	2170	--

1 FOR THE DEFENDANT:

2	52-A. Re-marked statement	2085	2087
3	164. 6/5/95 handwritten notes	2047	2048
4	165. 1/6/95 handwritten notes	2049	--

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08:43:39 1 THE COURT: As I indicated, the Court received  
08:43:40 2 a fax copy of a letter motion made by Ms. Peebles. Did  
08:43:44 3 you receive a copy of that, Mr. Oakes?

08:43:45 4 MR. OAKES: We did, Your Honor.

08:43:46 5 THE COURT: Okay, you've had the opportunity  
08:43:48 6 to review the document?

08:43:50 7 MR. MOODY: We have, Judge.

08:43:50 8 THE COURT: Okay, and your position?

08:43:52 9 MR. MOODY: Judge, we would oppose.  
08:43:55 10 Initially, Judge, there's been no foundation laid to --  
08:43:59 11 to somehow justify the claim that Michael Bohrer  
08:44:06 12 received a -- was faxed these copies. I don't believe  
08:44:09 13 Michael Bohrer was even asked when he testified if he  
08:44:12 14 had a fax machine in May of 1994.

08:44:15 15 THE COURT: Yeah, but I think you're -- I  
08:44:15 16 think you're misunderstanding what's being requested.  
08:44:17 17 It's not an admissibility in terms of whether Bohrer,  
08:44:20 18 we're going to get these documents because they're  
08:44:22 19 Bohrer documents, I think that it has to -- the  
08:44:24 20 foundation, if you are going to cross-examine, has to  
08:44:26 21 be the fax number is in fact the DA fax number solely  
08:44:29 22 for the purposes of impeachment, correct, Ms. Peebles,  
08:44:32 23 Ms. Bianco?

08:44:33 24 MS. PEEBLES: Yes, Judge.

08:44:34 25 THE COURT: This issue was raised I think on

08:44:36 1 Wednesday morning, and the Court was of the opinion  
08:44:38 2 that Ms. Bianco was trying to get documentary evidence  
08:44:41 3 in to the Court that was at this point subject to a  
08:44:45 4 motion, you would agree, right, all the Bohrer  
08:44:48 5 documents are subjected to the motion submitted by the  
08:44:50 6 People?

08:44:51 7 MS. PEEBLES: Although, Judge, I reread the  
08:44:53 8 transcript, and it appears we did get in 52 and 52-A  
08:44:56 9 for the purpose of just establishing that they were  
08:44:58 10 actually in Mr. Bohrer's box but not for the truth of  
08:45:01 11 the matter.

08:45:01 12 THE COURT: Not for the truth of the matter.

08:45:02 13 MS. PEEBLES: Which is why we needed the  
08:45:04 14 foundation set through the document.

08:45:06 15 THE COURT: I understand that, but what I'm  
08:45:08 16 saying is Wednesday the Court was of the opinion that  
08:45:11 17 Ms. Bianco was trying to get in all the documents in  
08:45:13 18 that were subject to the motion that you're waiting on  
08:45:15 19 a decision. I --

08:45:16 20 MS. PEEBLES: Yes.

08:45:17 21 THE COURT: The Court made a mistake. The  
08:45:18 22 Court didn't realize it was just for impeachment  
08:45:22 23 purposes. For the very limited purpose, I don't see  
08:45:23 24 why they don't come in for impeachment purposes.

08:45:26 25 MR. MOODY: Well, Judge, I guess the question

08:45:29 1 then becomes their impeachment is, if I understand the  
08:45:32 2 motion, somehow related to a security breach is what  
08:45:35 3 they're arguing. The problem with that is that this --  
08:45:37 4 this fax, and -- and if I can be permitted a bit of  
08:45:41 5 latitude, this fax was -- took place after the arrest  
08:45:46 6 of Richard Thibodeau, one day prior to his preliminary  
08:45:51 7 hearing.

08:45:51 8 THE COURT: Um hum.

08:45:52 9 MR. MOODY: The fax cover sheet which contains  
08:45:55 10 some of the information, it does not, I will admit, the  
08:45:57 11 stapled copy, and it appears from the copy that I have,  
08:46:00 12 the staple has -- was loosened or document had fallen  
08:46:04 13 off it appears, that's my speculation, but to Judge  
08:46:09 14 Walsh, then Attorney Walsh, on May thirty-first. In  
08:46:13 15 addition, the documents that they're talking about are  
08:46:16 16 documents that relate to Christopher Bivens and his --  
08:46:21 17 and he testified at that preliminary hearing and was  
08:46:23 18 cross-examined with those. My problem with this is,  
08:46:27 19 Judge, that the implication that they're trying to  
08:46:30 20 impeach him with is that he faxed them to Bohrer. That  
08:46:34 21 was the allegation and the question that was raised on  
08:46:37 22 Wednesday. Why did, and I believe I'm quoting pretty  
08:46:41 23 closely here, why Don Dodd was faxing documents to a  
08:46:47 24 prime suspect, Michael Bohrer.

08:46:48 25 THE COURT: But isn't that a question then for

08:46:50 1 the defense to say to Mr. -- Mr. Dodd why did you fax  
08:46:53 2 this to Mr. Bohrer, and if Mr. Dodd says I didn't, then  
08:46:57 3 they may not have the proper foundation and then it  
08:47:01 4 affects their -- the ability or the value of the  
08:47:03 5 impeachment does it not?

08:47:06 6 MR. MOODY: If the question is does Don Dodd  
08:47:10 7 know the fax number that's on there and does he know  
08:47:13 8 who it was faxed to, I guess I don't have a problem  
08:47:15 9 with that, but if the implication that there -- that --  
08:47:18 10 or the question is that they faxed it to Michael  
08:47:21 11 Bohrer, I don't believe -- based on Mr. Bohrer's  
08:47:22 12 testimony, that he got these statements from various  
08:47:24 13 people, he never said that it was faxed to him, I don't  
08:47:27 14 believe --

08:47:27 15 THE COURT: That's for the Court to consider  
08:47:29 16 based on Mr. Dodd's testimony, right?

08:47:31 17 MR. MOODY: Pardon me?

08:47:31 18 THE COURT: This could blow up in the  
08:47:33 19 defense's face if, you know --

08:47:34 20 MR. MOODY: It could I suppose, yes.

08:47:36 21 THE COURT: So I think if it's an issue of I  
08:47:39 22 know where they're trying to show that Mr. Dodd may not  
08:47:43 23 have had total control over the file, challenging his  
08:47:46 24 credibility, I think it's relevant to credibility only.  
08:47:49 25 Only.

08:47:50 1 MS. PEEBLES: That's right.

08:47:51 2 THE COURT: And if -- if you try to move it in  
08:47:53 3 which I'm not sure it would even be allowed to come in,  
08:47:55 4 but if there's no objection it does come in, it will  
08:47:58 5 only be considered for the fax number on the top. I  
08:48:03 6 think it's incumbent upon the defense to be able to  
08:48:06 7 establish that it went to Bohrer, or it, you know,  
08:48:09 8 there's no proof this went to Bohrer. Bohrer has it  
08:48:13 9 somehow, I agree, Bohrer, I apologize for  
08:48:15 10 mispronouncing his name.

08:48:16 11 MS. PEEBLES: But I do think 52 and 52-A have  
08:48:19 12 already been admitted for the limited purpose that it's  
08:48:22 13 already in the box, so we're not even entering 52 and  
08:48:25 14 52-A in at this point because they're already in. All  
08:48:27 15 we're seeking to do is ask Mr. Dodd questions about it.

08:48:29 16 THE COURT: It should be very limited.

17 MS. PEEBLES: Correct.

08:48:30 18 THE COURT: It's not going to be a very long  
08:48:33 19 cross-examination. Did you fax it. No. I don't know.  
08:48:34 20 I don't know exactly what Ms. Bianco is going to create  
08:48:38 21 and ask but it's going to be very limited.

08:48:39 22 MR. OAKES: Your Honor, if I may.

08:48:41 23 THE COURT: Sure.

08:48:41 24 MR. OAKES: Your Honor's probably correct in  
08:48:43 25 the assessment. I guess the one issue I would have is



08:48:46 1 the foundation. I'm looking at the motion papers that  
08:48:48 2 were submitted on this issue is there's a reference to  
08:48:51 3 a breach in security. In referencing to the breach  
08:48:55 4 that was referenced by Investigator Whipple. As of May  
08:48:59 5 thirty-first of ninety-four when this was faxed to the  
08:49:02 6 DA's Office, my understanding is the files were at the  
08:49:06 7 Sheriff's Department at that point basically being  
08:49:10 8 secured at the Sheriff's Department. They didn't move  
08:49:12 9 up to the DA's Office Grand Jury room --

08:49:14 10 THE COURT: Till August.

08:49:16 11 MR. OAKES: -- at a later point. So if the  
08:49:19 12 purpose is to show breach of security, that the file  
08:49:20 13 was breached again, I don't think it --

08:49:22 14 THE COURT: You don't think it relates back to  
08:49:23 15 the DA's office.

08:49:24 16 MR. OAKES: Right.

08:49:24 17 THE COURT: And I notice the date as well, so  
08:49:27 18 again, relevant, yes. How's the Court going to  
08:49:30 19 consider it, it depends.

08:49:31 20 MR. OAKES: Okay, I would just think as a  
08:49:33 21 foundational matter, they're using it to show a breach,  
08:49:36 22 they have to first establish the files were the sole  
08:49:39 23 and exclusive custody of the DA at the thirty-first.

08:49:43 24 THE COURT: That's why I said it may or may  
08:49:43 25 not be effective. Absolutely. Ms. Bianco, do you wish

08:49:47 1 to be heard?

08:49:48 2 MS. BIANCO: No, Your Honor, I was getting  
08:49:50 3 some water.

08:49:50 4 THE COURT: Okay, so the Court will allow it  
08:49:54 5 for the impeachment purposes only. However, I think  
08:49:56 6 you have some hurdles to overcome, but it's up to Ms.  
08:49:59 7 Bianco or Ms. Peebles to overcome those hurdles, but if  
08:50:02 8 you try to move these documents in, and if they're  
08:50:05 9 allowed in, it will only be allowed for the fax number  
08:50:08 10 issue, okay, Ms. Bianco?

08:50:10 11 MS. BIANCO: That's fine, Judge.

08:50:11 12 THE COURT: Are you ready?

08:50:12 13 MR. MOODY: Yes.

08:50:13 14 THE COURT: If memory serves me right, Mr.  
08:50:15 15 Dodd is back and we're here on the recross by Ms.  
08:50:17 16 Bianco. You've already redirected.

08:50:19 17 MR. MOODY: No, I believe we're still in the  
08:50:20 18 middle of my redirect because I believe we had reached  
08:50:24 19 the point of, and I apologize, I did after Wednesday  
08:50:30 20 find actually --

08:50:31 21 THE COURT: That's right, you had not found  
08:50:32 22 the response to it.

08:50:34 23 MR. MOODY: Yeah. To give credit where credit  
08:50:36 24 is due, my learned boss found it 'cause I couldn't  
08:50:40 25 remember where I had seen it so --

08:50:45 1 THE COURT: Okay, Mr. Dodd, please.

08:51:05 2 D O N A L D D O D D, Called as a witness, having been duly  
08:51:06 3 sworn, was examined and testified further as follows:

08:51:06 4 THE CLERK: Please state your name for the  
08:51:10 5 record.

08:51:10 6 THE WITNESS: Donald H. Dodd.

08:51:12 7 THE CLERK: Thank you.

08:51:13 8 THE WITNESS: Thank you.

08:51:13 9 THE COURT: Mr. Dodd, I'll again ask you do  
08:51:15 10 you consent to having your testimony audio or video  
08:51:18 11 taped?

08:51:18 12 THE WITNESS: I consent, yes, sir.

08:51:19 13 THE COURT: Thank you, Mr. Dodd.

08:51:21 14 THE WITNESS: Thank you.

08:51:21 15 THE COURT: Mr. Moody, whenever you're ready,  
08:51:23 16 sir.

17 REDIRECT EXAMINATION

08:51:40 18 BY MR. MOODY:

08:51:41 19 Q. Mr. Dodd, I believe when we adjourned on Wednesday  
08:51:43 20 we were at the point where we were discussing Judge Walsh's  
08:51:48 21 or Mr. Walsh's response, excuse me, motion which is  
08:51:54 22 identified as Exhibit 142. Do you recognize that motion  
08:51:57 23 and do you recognize the questions that we're talking about  
08:52:00 24 at that point in time or the issue that was discussed at  
08:52:02 25 that point in time?

08:52:03 1 A. One-forty-two I recognize, it appears to be the  
08:52:05 2 notice of motion and motion of Attorney William Walsh on  
08:52:09 3 behalf of Richard Thibodeau, yes, sir.

08:52:11 4 Q. And specifically we were -- what was being discussed  
08:52:15 5 I believe on cross was page eleven, paragraph J. Do you  
08:52:22 6 remember that?

08:52:23 7 A. I know that Ms. Bianco had asked me a series of  
08:52:26 8 questions, yes.

08:52:26 9 Q. Now I want to -- I want to go back if we could two  
08:52:30 10 pages to page nine because on page eleven that subparagraph  
08:52:36 11 J is part of a larger paragraph thirty-three, is that  
08:52:40 12 correct?

08:52:40 13 A. Starting at upon my inspection of the document page  
08:52:44 14 nine which is entitled demand for bill of particulars, it  
08:52:48 15 starts with a paragraph thirty-three, and then after  
08:52:50 16 thirty-three it's alphabetically labeled A through Z, and J  
08:53:02 17 is a portion of thirty-three, yes.

08:53:04 18 Q. Now, in the -- in paragraph J there are a number of  
08:53:12 19 lead sheets that are identified that apparently that Judge  
08:53:16 20 Walsh identified that he didn't believe he got, is that  
08:53:18 21 accurate?

08:53:18 22 A. He identified it in paragraph J as lead sheets, yes.

08:53:22 23 Q. And upon receiving this motion, did you go through  
08:53:26 24 and answer, answer the motion?

08:53:29 25 A. Yeah. I submitted an answer to the entirety of the

08:53:31 1 motion. This was just one aspect of the motion, yes.

08:53:44 2 (People's Exhibit WWW was marked for  
08:53:46 3 identification).

08:53:59 4 Q. Showing you what has been marked as WWW, I'm going  
08:54:03 5 to ask you if you recognize that.

08:54:05 6 A. I do recognize it, yes, sir.

08:54:32 7 Q. And what is that?

08:54:33 8 A. This appears to be a reproduction of my answer in  
08:54:38 9 response to Attorney Walsh's motion that is one-forty-two.

08:54:43 10 Q. Okay, and does it appear -- you say it appears to be  
08:54:46 11 a copy of it, is that accurate? Doesn't appear to be the  
08:54:51 12 original.

08:54:51 13 A. It doesn't appear to be the original, no, it does  
08:54:53 14 not.

08:54:53 15 Q. Does it appear to be a full and fair and accurate  
08:54:55 16 copy as you recollect?

08:54:56 17 A. Yes.

08:54:57 18 MR. MOODY: Judge, previously given a copy of  
08:55:00 19 this to defense counsel, but I would show it again to  
08:55:03 20 defense counsel and move to admit.

08:55:12 21 MS. BIANCO: No objection.

08:55:12 22 THE COURT: WWW is in.

23 (People's Exhibit WWW was received in  
08:55:16 24 evidence).

08:55:16 25 Q. Now initially, in the process that you were doing at

08:55:23 1 the time, if you -- a motion or document, legal document  
08:55:35 2 was sent to one judge, or excuse me, to one attorney, would  
08:55:38 3 you also send that carbon copy to the other attorney?

08:55:41 4 A. Yes.

08:55:42 5 MS. BIANCO: Objection to the broad scope of  
08:55:44 6 the question "would you also send." If he wants to  
08:55:46 7 talk about specific documents, that's fine, but not in  
08:55:49 8 general.

08:55:52 9 MR. MOODY: I was trying to set a little bit  
08:55:54 10 of a foundation.

08:55:55 11 THE COURT: Foundation. I'll allow the  
08:55:56 12 question, then you can move to specifics.

08:55:59 13 Q. So with regard to WWW, would you have sent a copy of  
08:56:03 14 that to Attorney Fahey as well?

08:56:09 15 A. Best recollection is yes.

08:56:11 16 Q. Now, showing you WWW again, what is the date on that  
08:56:18 17 response?

08:56:21 18 A. The affirmation by myself is, page forty-nine of the  
08:56:34 19 response, is February second, 1995. February second, 1995,  
08:56:38 20 sir.

08:56:38 21 Q. Thank you.

08:57:12 22 (People's Exhibit XXX was marked for  
08:57:14 23 identification).

08:57:15 24 Q. Showing you Exhibit XXX, do you recognize that?

08:57:18 25 A. Just a minute, sir.

08:57:39 1 (Whereupon, there was a pause in the  
08:57:49 2 proceeding.)

08:57:49 3 A. I do.

08:57:50 4 Q. And what is that?

08:57:50 5 A. This appears to be a reproduction of a letter, I'll  
08:57:54 6 call it a file copy letter, dated February third, 1995 by  
08:57:59 7 myself to Attorney Joseph Fahey with a date of February  
08:58:03 8 third, 1995, specifically referencing enclosing --

08:58:07 9 Q. We'll discuss what it talks about in a moment. Does  
08:58:10 10 it appear to be a full and fair and accurate copy of that  
08:58:12 11 letter as you remember it?

08:58:15 12 A. Yes.

08:58:22 13 MR. MOODY: Showing Exhibit XXX to defense  
08:58:26 14 counsel, Judge, I would move to admit.

08:58:30 15 MS. BIANCO: May I have a moment, Your Honor?  
08:58:31 16 It's a two-page letter.

08:58:32 17 THE COURT: Sure.

08:58:33 18 (Whereupon, there was a pause in the  
08:59:33 19 proceeding.)

08:59:33 20 MS. BIANCO: No objection.

08:59:35 21 THE COURT: XXX is in without objection.

22 (People's Exhibit XXX was received in  
08:59:41 23 evidence).

08:59:41 24 Q. And in XXX does it reflect one way or the other  
08:59:46 25 whether or not a copy of that motion which is identified as

08:59:49 1 WWW was sent to Joe Fahey?

08:59:53 2 A. It does.

08:59:56 3 Q. What specifically does it say?

08:59:58 4 A. Under the salutation, "Dear Mr. Fahey: Enclosed  
09:00:01 5 please find a copy of the People's answering papers to the  
09:00:04 6 motion of Attorney William Walsh representing codefendant  
09:00:06 7 Richard P. Thibodeau."

09:00:08 8 Q. Now, in your answer, which is WWW, did you  
09:00:21 9 specific -- well, actually I'm going to withdraw that  
09:00:24 10 question. I want to talk a little bit about lead sheets  
09:00:27 11 and the process of the investigation. Lead sheets as you  
09:00:32 12 understand it were what with regard to the investigation if  
09:00:36 13 you understand my question because it was poorly worded.

09:00:40 14 A. I do. A lead sheet would be a piece of paper that  
09:00:43 15 would have a number on it, and as it relates to the  
09:00:46 16 investigation, the lead number would reflect whatever the  
09:00:52 17 lead number was. A lead number did not necessarily create  
09:00:58 18 a lead sheet. It was merely a way to organize the leads  
09:01:03 19 that came in so that a lead sheet would have the lead  
09:01:08 20 number. Usually if memory serves correctly, it's in the  
09:01:12 21 upper right-hand corner, and lead sheets would reflect  
09:01:15 22 principally Investigator Whipple either creating lead sheet  
09:01:22 23 and merely putting the source of the lead or assigning it  
09:01:26 24 to someone for the purposes of further investigation.

09:01:28 25 Q. And if a lead sheet needed further investigation,



09:01:35 1 what -- with regard to discovery, what would happen if at  
09:01:38 2 the time you turned the series of documents over there were  
09:01:41 3 lead sheets that didn't -- that hadn't been completed,  
09:01:44 4 hadn't been followed up?

09:01:46 5 A. If I understand your question correctly because --  
09:01:48 6 and to properly answer it, this was a work in progress, it  
09:01:51 7 was an investigation in progress, continued through the  
09:01:53 8 entirety of it so that a specific lead number that  
09:01:59 9 generated a lead sheet that was then tasked to a person to  
09:02:02 10 do something, if the officer or person who did something  
09:02:09 11 either obtained a statement or additional from a potential  
09:02:13 12 witness or obtained additional information or created a  
09:02:16 13 police report or gathered evidence, then the officer to  
09:02:20 14 whom the lead sheet had been tasked would then provide that  
09:02:25 15 information to Investigator Whipple and it would then be  
09:02:29 16 made part of that particular lead sheet to keep it  
09:02:32 17 organized, and the way it would be made part of it would be  
09:02:35 18 stapled or affixed in some form or fashion.

09:02:37 19 Q. My question was you talked about for example on  
09:02:42 20 December fourteenth a number of boxes being turned over to  
09:02:45 21 Joe Fahey, do you remember that?

09:02:46 22 A. Yes.

09:02:47 23 Q. If there were lead sheets that on December  
09:02:49 24 fourteenth had not yet been followed up on, what would have  
09:02:53 25 been the status with regard to discovery with regard to

09:02:56 1 those lead sheets?

09:02:57 2 A. Well, the lead sheets would have been turned over to  
09:03:00 3 Mr. Fahey, but if there was subsequent after obtained after  
09:03:04 4 the date that they were made available, turned over, after  
09:03:07 5 obtained documentation that was part of CPL 240.60 ongoing  
09:03:12 6 discovery, and once that information was received by the  
09:03:15 7 Sheriff's Department, then as part of the People's  
09:03:18 8 obligation to turn it over, it would be then thereafter  
09:03:23 9 photocopied in conformity with the procedure identified  
09:03:25 10 before and then subsequently disclosed to attorneys Walsh  
09:03:28 11 and Fahey.

09:03:29 12 Q. Now, what if a lead came in after say December  
09:03:32 13 fourteenth and what would be the process for discovery on  
09:03:38 14 that?

09:03:39 15 A. Well, the procedures stay constant as to insuring  
09:03:43 16 that it would be organized what came in and what was  
09:03:47 17 disclosed, but if a lead came in after the date of December  
09:03:51 18 fourteen, 1994, and there was a lead sheet generated, and  
09:03:58 19 that lead sheet would go over to counsel, and/or if there  
09:04:03 20 was any additional documentation that was obtained in  
09:04:06 21 furtherance of that lead sheet being tasked, it would also  
09:04:10 22 be turned over to counsel, and that was part of the ongoing  
09:04:13 23 discovery responsibility.

09:04:14 24 Q. But obviously after, if it came in, it would be  
09:04:17 25 after the say the December fourteenth discovery.

09:04:20 1 A. Yes because to answer your question, this is very  
09:04:23 2 much was a work in progress so that a particular lead that  
09:04:28 3 had been turned over to Attorney Fahey and Walsh prior to  
09:04:32 4 or on December fourteenth, if after that date there was  
09:04:36 5 information that was obtained associated with that lead  
09:04:41 6 number and sheet that had previously been obtained, even  
09:04:44 7 though the lead sheet may have gone over subsequent to that  
09:04:48 8 date, there was information generated, so that also had to  
09:04:51 9 go over, but it related back in time to that particular  
09:04:54 10 lead sheet number, and also there were -- there were  
09:04:59 11 duplicate lead numbers. In other words --

09:05:02 12 Q. Well, what -- when you say that, what does that  
09:05:04 13 mean?

09:05:05 14 A. An investigation is a work in progress, and I have  
09:05:08 15 to state that Investigator Whipple is the person that  
09:05:11 16 directly oversaw this. This was not something that I was  
09:05:14 17 tasked to but I am familiar --

09:05:15 18 MS. BIANCO: Objection. This is  
09:05:17 19 non-responsive, Judge.

09:05:18 20 MR. MOODY: I think he's trying to explain the  
09:05:20 21 basis for his response.

09:05:21 22 THE COURT: I'll allow it.

09:05:22 23 A. I'm familiar with the process that was used.  
09:05:25 24 Duplicate lead numbers could take various forms that a  
09:05:31 25 person could report something and that could be lead one.

09:05:35 1 The same person could again contact the Sheriff's  
09:05:40 2 Department and it could all of a sudden now be lead  
09:05:43 3 one-hundred and fifty. Same person, same content, but in  
09:05:47 4 essence it's another lead number that duplicated in essence  
09:05:52 5 the substance of what the first lead number was, so there  
09:05:57 6 are times when you might have the same source of  
09:06:00 7 information, but it would have multiple lead numbers if you  
09:06:06 8 will.

09:06:06 9 Q. And in your course of your response to that  
09:06:10 10 particular discovery, or excuse me, the subparagraph J on  
09:06:17 11 page eleven, did you with the assistance of anyone go  
09:06:20 12 through those leads and examine what the status of them  
09:06:25 13 was, the leads he said he didn't get?

09:06:27 14 A. Yes. I -- I -- best recollection, sir, is I  
09:06:32 15 requested the assistance of someone to do it and in part I  
09:06:35 16 did it, yes, best recollection.

09:06:36 17 Q. And what to your recollection was the -- was the  
09:06:39 18 answer to those leads, and I don't want to go lead by lead  
09:06:43 19 but in a specific general way.

09:06:45 20 A. Well, if I can just take a moment please.

09:06:48 21 (Whereupon, there was a pause in the  
09:06:57 22 proceeding.)

09:06:57 23 A. My best answer as I testify here today would be in  
09:07:03 24 my answer designated WWW, my paragraph twenty-eight, page  
09:07:10 25 fifteen, responds to Attorney Walsh's paragraph J by

09:07:18 1 specific numbers, and then it continues on my paragraph  
09:07:23 2 twenty-eight, twenty-nine, thirty, thirty-one through  
09:07:27 3 thirty-two.

09:07:28 4 Q. And that's in evidence and we can let -- we can -- I  
09:07:32 5 suppose we can have -- the Court can review that at its  
09:07:35 6 leisure. In the process of going through this, did you  
09:07:38 7 make notes or did you receive notes from Investigator  
09:07:43 8 Whipple? You said you had his assistance in this?

09:07:46 9 A. Best recollection is yes, best recollection.

09:08:39 10 (People's Exhibit YYY was marked for  
09:08:41 11 identification).

09:08:41 12 Q. I'm going to show you what's been marked as People's  
09:08:43 13 Exhibit YYY and ask you if you recognize that.

09:09:47 14 (Whereupon, there was a pause in the  
09:10:03 15 proceeding.)

09:10:03 16 A. Yes, I recognize it.

09:10:05 17 Q. And what is it?

09:10:06 18 A. Well, YYY, first page appears to be a reproduction  
09:10:13 19 of Mr. Walsh's -- a portion of Mr. Walsh's motion which  
09:10:18 20 contains paragraph J which had his description of lead  
09:10:23 21 sheet numbers as page one, and then thereafter that there  
09:10:28 22 is a -- I didn't count them, but there's a series of pieces  
09:10:31 23 of paper stapled together where there's writing on them,  
09:10:35 24 and then after that in yellow are pieces of paper that are  
09:10:40 25 part of this that would be in my handwriting.

09:10:43 1 Q. And so what does it appear that that document  
09:10:46 2 relates to?

09:10:47 3 A. It -- it relates to as the work product associated  
09:10:53 4 with developing information so that I could respond to the  
09:10:58 5 motion of or demand for bill of particulars portion of Mr.  
09:11:02 6 Walsh's motion.

09:11:10 7 MR. MOODY: Judge, I previous given a copy of  
09:11:12 8 this to defense counsel. I show Exhibit YYY to defense  
09:11:16 9 counsel and and move it in.

09:11:18 10 MS. BIANCO: Judge, I'd like a brief voir  
09:11:20 11 dire.

09:11:20 12 THE COURT: Sure.

09:11:22 13 VOIR DIRE EXAMINATION

09:11:23 14 BY BIANCO:

09:11:24 15 Q. Mr. Dodd, on this particular document, YYY, there  
09:11:30 16 are two different handwritings in the notes. Could you  
09:11:33 17 look at the first page of -- the second page of the  
09:11:37 18 document. The first page is the reproduction of Judge  
09:11:41 19 Walsh's motion, is that correct?

09:11:41 20 A. Yes, a portion of his motion.

09:11:44 21 Q. A portion of his motion.

09:11:45 22 A. Yes.

09:11:45 23 Q. The second page is some handwritten notes. Is that  
09:11:49 24 your handwriting?

09:11:50 25 A. No.

09:11:51 1 Q. Whose writing is that?

09:11:53 2 A. It appears to be Investigator Whipple's. It appears  
09:11:56 3 to be. But I -- it appears to be.

09:12:00 4 Q. Is that something you were relying on in making your  
09:12:03 5 response, these handwritten notes by someone else?

09:12:07 6 A. I looked at the notes, but ultimately it was my  
09:12:10 7 decision to decide how to craft the answer. This was just  
09:12:14 8 a request for assistance, and the notes reflect something  
09:12:21 9 that was done by someone not me, but I would have looked at  
09:12:25 10 it, yes.

09:12:26 11 Q. Okay, so the same with these white sheets of paper,  
09:12:30 12 the next -- the next page which I'll call page three,  
09:12:34 13 that's in the same person's handwriting which is not yours,  
09:12:37 14 is that correct?

09:12:37 15 A. I'm sorry, page three?

09:12:39 16 Q. Page three of that document, there's no numbers on  
09:12:44 17 the document.

09:12:45 18 A. I -- yes, ma'am. Are you referring to a document  
09:12:47 19 that has a number eight one seven at the top or --

09:12:52 20 Q. I'm referring to a document --

09:12:54 21 A. Could you show me?

09:12:54 22 Q. Yes.

09:12:55 23 A. Thank you. Thank you.

09:13:05 24 Q. It starts with the top of the page five nine four.  
09:13:09 25 That's not your handwriting, correct?

09:13:10 1 A. To make it easy, no, none of those are.

09:13:13 2 Q. When you say none of those, does your handwriting  
09:13:17 3 start on the yellow sheets of paper in this document?

09:13:21 4 A. Yes.

09:13:23 5 Q. Is all of these yellow notes on this document, is  
09:13:27 6 that all in your hand, all of the remaining yellow sheets?

09:13:36 7 A. Yes.

09:13:38 8 Q. Including the final page?

09:13:50 9 A. Yes.

09:13:51 10 Q. And is it your testimony that you relied at least in  
09:13:54 11 part on this other person's writings in crafting your  
09:14:00 12 answers, is that fair?

09:14:01 13 A. I looked at it, but what I ultimately did was check  
09:14:05 14 myself. This was merely to find out some information and  
09:14:09 15 then ultimately I had to respond. It -- there was -- this  
09:14:13 16 was but one aspect of a very large motion, miss, and I  
09:14:16 17 asked someone to preliminarily look, but then I would have  
09:14:19 18 looked also.

09:14:20 19 MS. BIANCO: I have no objection to the  
09:14:22 20 document, Your Honor.

09:14:23 21 THE COURT: Thank you. YYY is in.

22 (People's Exhibit YYY was received in  
23 evidence).

09:14:27 24 BY MR. MOODY:

09:14:37 25 Q. Now turning now back for a brief moment to the



09:14:40 1 motion that is I believe one-forty-two?

09:14:44 2 A. Yes.

09:14:44 3 Q. That is Judge Walsh's motion. In starting the -- at  
09:14:48 4 page nine in what he entitled is a demand for bill of  
09:14:52 5 particulars, it starts on you identified them as paragraph  
09:14:55 6 thirty-three and then it has subparagraphs A through Z?

09:14:58 7 A. Yes.

09:14:59 8 Q. In a general sense, what are subparagraphs A through  
09:15:07 9 Z?

09:15:07 10 MS. BIANCO: Objection to the general sense.

09:15:08 11 I think the document speaks to itself.

09:15:10 12 THE COURT: I'll allow it.

09:15:11 13 A. Well, it's paragraph thirty-three A through Z would  
09:15:16 14 be a portion of Mr. Walsh's demand for a bill of  
09:15:19 15 particulars is the way he cast it.

09:15:21 16 Q. What is he -- I guess the question I'm asking is  
09:15:24 17 what is he -- what is in a general sense, what is he  
09:15:27 18 demanding in those, what is he looking for?

09:15:29 19 A. Well, as to paragraph thirty-three A, it's a  
09:15:35 20 statement of the exact time, date and location of the  
09:15:37 21 alleged offense. As to paragraph B, a statement of names  
09:15:40 22 and addresses of all prospective --

09:15:43 23 Q. Well, I'm going to stop you there. I was hoping not  
09:15:44 24 to go through individually because the document -- let me  
09:15:47 25 get at it this way. As you review A through Z, is there

09:15:52 1 any demand there for a -- for anything involving Heidi  
09:15:56 2 Allen's status as confidential informant be it reports, be  
09:15:59 3 it the file, be it anything?

09:16:01 4 A. One second, sir.

09:16:02 5 (Whereupon, there was a pause in the  
09:16:16 6 proceeding.)

09:16:16 7 MS. BIANCO: Can we stipulate that it wouldn't  
09:16:19 8 be any of the lead numbers because it didn't have a  
09:16:21 9 lead because he's referring to lead numbers that were  
09:16:24 10 provided. Can we stipulate that there was no lead  
09:16:28 11 number on the confidential informant file so this is  
09:16:30 12 clear?

09:16:31 13 MR. MOODY: I believe that's been testified  
09:16:33 14 to. I don't know we need --

09:16:34 15 THE COURT: I don't think that's where you're  
09:16:36 16 going with the line of questioning is it?

09:16:37 17 MR. MOODY: It's not really where I'm going  
09:16:39 18 with the line of questioning, but -- but to answer her  
09:16:41 19 question, it's been testified to. I don't know that I  
09:16:43 20 need to stipulate to it.

09:16:51 21 A. Based upon my review of Attorney Walsh's paragraph  
09:16:56 22 thirty-three A through Z, I don't see any demand for any  
09:17:00 23 information associated with Heidi Allen purportedly being a  
09:17:05 24 confidential informant or providing confidential  
09:17:08 25 information.

09:17:08 1 Q. And do you know based on one-forty-three when Judge  
09:17:13 2 Walsh's motion was filed, that motion was filed?

09:17:17 3 A. Best recollection January thirteenth, received by  
09:17:22 4 the People, January seventeen, 1995, filed I believe  
09:17:28 5 January thirteen, 1995.

09:17:29 6 Q. And that would have been after all of -- well, not  
09:17:38 7 all of, but the five boxes that had been given both to --  
09:17:42 8 to Judge Walsh and Judge Fahey, is that accurate?

09:17:46 9 A. After December fourteenth and before March twenty-  
09:17:49 10 first, yes.

09:17:50 11 Q. Now, in paragraphs A through Z of that motion, there  
09:18:07 12 are in addition to paragraph J which has a very extensive  
09:18:10 13 list of leads he's looking for, there are demands for other  
09:18:13 14 documents, is that accurate?

09:18:15 15 A. Yes.

09:18:15 16 Q. Okay. Now, going back to you said at one point  
09:18:23 17 you -- I believe you testified that you went through the --  
09:18:29 18 well, maybe you didn't, so I'll ask it this way. At any  
09:18:32 19 point in time prior to the five boxes being turned over to  
09:18:36 20 Judge Fahey in December, did you take an opportunity to go  
09:18:40 21 through it yourself, the five boxes?

09:18:44 22 A. The five boxes.

09:18:45 23 Q. Yes.

09:18:46 24 A. The --

09:18:46 25 Q. From the Sheriff's Department that were eventually

09:18:49 1 copied.

09:18:50 2 A. Well, I went through the documents that made up the  
09:18:54 3 police investigation report and all the attachments, and  
09:18:57 4 then yes, I would have looked at the material that was put  
09:19:04 5 into the boxes for attorneys Walsh and Fahey, yes, I would  
09:19:08 6 have done that.

09:19:09 7 Q. And -- and to your recollection, did you take any  
09:19:12 8 notes or document what you were doing at that point in  
09:19:15 9 time?

09:19:16 10 A. Well, there's a file memorandum I created that I  
09:19:20 11 believe I testified to that reflected what it is that I had  
09:19:23 12 done, sir.

09:19:23 13 Q. Well, I guess what I'm asking is I'm talking about  
09:19:26 14 handwritten notes as you were going through the box, boxes.

09:19:31 15 A. I don't have a recollection of any handwritten notes  
09:19:34 16 as it relates to going through the boxes.

09:19:41 17 MR. MOODY: If I could get that marked.

09:20:20 18 (People's Exhibit ZZZ was marked for  
09:20:22 19 identification).

09:20:23 20 Q. Showing you what's been marked as People's Exhibit  
09:20:25 21 ZZZ.

09:21:02 22 (Whereupon, there was a pause in the  
09:21:32 23 proceeding.)

09:21:32 24 A. Yes. I reviewed ZZZ, yes, sir.

09:21:34 25 Q. And what is ZZZ?

09:21:36 1 A. ZZZ in its entirety, in its entirety, I won't count  
09:21:41 2 the pieces of paper, it's a lot of pieces of paper.

09:21:45 3 Q. It's a pad that's all together?

09:21:46 4 A. That's true, in my hand, my notes. This was created  
09:21:50 5 by me for a particular purpose.

09:21:52 6 Q. And what purpose was that?

09:21:54 7 A. To make sure that all of the documentation went over  
09:21:58 8 to attorneys Walsh and Fahey when it was being reproduced.

09:22:03 9 I created this document, and it reflects certain

09:22:08 10 subheadings that are consistent with a file designation.

09:22:16 11 By filing part of the Sheriff's Department investigation  
09:22:19 12 report would have files that would have a heading on it.

09:22:21 13 For example, HA sightings, Heidi Allen sightings, and what

09:22:26 14 I did was with Investigator Whipple in the room where the

09:22:30 15 file was located created this list. The list would be all

09:22:35 16 of the Sheriff's Department investigation report by file

09:22:40 17 designation. This was then used by me to insure that every

09:22:46 18 portion of the file was reproduced so that when the portion

09:22:51 19 of the file was taken, the original file was taken and

09:22:54 20 handed to the person who was going to reproduce it, I would

09:22:57 21 check, and the checks are in my hand also, that that

09:23:02 22 portion of the file had in fact been reproduced.

09:23:05 23 Q. All right, and is this the original?

09:23:08 24 A. Yes. That would have been done during --

09:23:15 25 MS. BIANCO: Objection. There's not even a

09:23:17 1 question at this point.

09:23:17 2 THE COURT: That's fine. We can wait for  
09:23:20 3 followup question.

09:23:20 4 THE WITNESS: Yes, sir.

09:23:20 5 MR. MOODY: Judge, showing Exhibit ZZZ to  
09:23:24 6 defense counsel, I move to admit.

09:23:26 7 MS. BIANCO: I'd like to voir dire the witness  
09:23:27 8 if I could.

09:23:28 9 THE COURT: Yes.

09:23:29 10 VOIR DIRE EXAMINATION

09:23:30 11 BY MS. BIANCO:

09:23:31 12 Q. These notes that you created, you created by going  
09:23:34 13 through each and every document in that file, the Sheriff's  
09:23:40 14 Department original file, is that correct?

09:23:41 15 A. I created that list, miss, by looking at the  
09:23:45 16 entirety of the file, and the Sheriff's Department file had  
09:23:50 17 sub-files, it's one large file, and within the file itself  
09:23:54 18 there were sub-files. The sub-files were identified by  
09:23:59 19 heading, and the list reflects the headings that correspond  
09:24:04 20 to the chronologic headings in the Sheriff's Department  
09:24:09 21 file.

09:24:09 22 Q. And there was -- you went through each box, is that  
09:24:13 23 right, to compose this list?

09:24:14 24 A. Yes.

09:24:15 25 Q. And box by box you designated like first box, second

09:24:20 1 box, third box, fourth box, in your notes, is that right?

09:24:24 2 A. I followed that procedure, yes.

09:24:26 3 Q. And you even did it in alphabetical order, isn't  
09:24:29 4 that right?

09:24:30 5 A. I didn't do it in alphabetical order, miss, I did it  
09:24:34 6 consistent with the manner in which the documents that were  
09:24:37 7 in that portion of the Sheriff's Department file were  
09:24:40 8 listed. I literally wrote down whatever it is would be the  
09:24:45 9 first portion of box one, file designated Heidi Allen  
09:24:50 10 sightings. The next portion, whatever it would be, and I  
09:24:53 11 followed that chronology.

09:24:56 12 MS. BIANCO: Absolutely no objection.

09:25:06 13 BY MR. MOODY:

09:25:06 14 Q. Showing you Exhibit ZZZ.

09:25:09 15 THE COURT: ZZZ in without objection.

16 (People's Exhibit ZZZ was received in  
09:25:13 17 evidence).

09:25:13 18 Q. If you could turn to the -- well, do you recollect  
09:25:18 19 the date in which you did this or dates?

09:25:22 20 A. It being the creation of this list?

09:25:24 21 Q. Yes, this list.

09:25:25 22 A. I can tell you, I can respond by saying the general  
09:25:28 23 time frame.

09:25:29 24 Q. Well, just see if we can get my question and we'll  
09:25:33 25 go from there. Do you recall the specific date?

09:25:36 1 A. It -- no.

09:25:37 2 MS. BIANCO: Objection, Judge. He initially  
09:25:39 3 didn't even recall creating it. Now he's asking him  
09:25:41 4 about dates. Unless there is a date written on it.

09:25:43 5 THE WITNESS: I did --

09:25:44 6 THE COURT: Hold on a second. I'll allow the  
09:25:46 7 question.

09:25:46 8 A. This was created prior to December fourteen, 1994.

09:25:53 9 Q. I want you to turn if you could to the -- I guess it  
09:25:57 10 would be the second page, it has the first heading is  
09:25:59 11 evidence.

09:26:01 12 A. Yes.

09:26:01 13 Q. Is there a dates or dates on that, on that page?

09:26:06 14 A. 12/5, my hand.

09:26:09 15 Q. Okay, and then turning, going a couple pages later,  
09:26:13 16 I believe it would be page four starts I think that's pen  
09:26:16 17 register, is there a date or dates on that date?

09:26:19 18 A. There is. 12/5/94.

09:26:21 19 Q. Is that in your handwriting as well?

09:26:24 20 A. Yes. Everything is, all of this is in my  
09:26:26 21 handwriting.

09:26:27 22 Q. Turning now, moving down to well, the page that  
09:26:35 23 starts with Heidi Allen and then under it is Darlene  
09:26:38 24 Austin.

09:26:40 25 A. Yes, there -- I turned to that page, yes.



09:26:43 1 Q. Are there date or dates on that?

09:26:45 2 A. 12/5.

09:26:46 3 THE COURT: There is -- what's the point in  
09:26:48 4 going through date by date?

09:26:49 5 MR. MOODY: Judge, my followup is does that  
09:26:53 6 refresh your recollection as to the exact date you  
09:26:53 7 might have done that.

09:26:54 8 A. On or about 12/5, 1994.

09:26:56 9 Q. Which would have been obviously before it was turned  
09:26:59 10 over, is that accurate?

09:27:01 11 A. Yes.

09:27:02 12 Q. Would it -- to your recollection, would it have also  
09:27:04 13 been before you had received the reports from Deputy  
09:27:11 14 VanPatten, Deputy Anderson and Deputy Montgomery regarding  
09:27:19 15 Heidi Allen's CI file?

09:27:21 16 MS. BIANCO: Objection. Now he's completely  
09:27:23 17 leading the witness, directing him to an answer.

09:27:26 18 THE COURT: You can ask it in a non-leading  
09:27:28 19 manner.

09:27:28 20 Q. Do you remember when you received Deputy Anderson's,  
09:27:30 21 Deputy VanPatten's and deputy, or excuse me, let me ask it  
09:27:35 22 this way. When they were received by the Sheriff's  
09:27:38 23 Department when Deputy Anderson's, Deputy Montgomery and  
09:27:42 24 Deputy VanPatten's three reports regarding the CI file were  
09:27:46 25 received by the Sheriff's Department.

09:27:47 1 A. 12/9, 1994.

09:28:13 2 Q. Now with regard to -- I'll take back the other  
09:29:19 3 exhibits you got in front of you. With regard to YYY which  
09:29:30 4 I believe you identified as basically your work product in  
09:29:34 5 responding to Judge Walsh's motion.

09:29:36 6 A. In part it is my work product, yes, in part.

09:29:39 7 Q. You identified, or excuse me, on the front page of  
09:29:42 8 that there is -- you identified that as a photocopy of  
09:29:45 9 what -- of a portion of Judge Walsh's motion, specifically  
09:29:49 10 paragraph thirty-three, subparagraph J, correct?

09:29:52 11 A. Yes.

09:29:52 12 Q. Okay, there are some green marks on that paragraph.  
09:29:58 13 Do you recognize those?

09:30:00 14 A. I see the green marks, yes.

09:30:01 15 Q. Do you recollect who made those?

09:30:07 16 A. I do not.

09:30:10 17 Q. Okay, if you could turn then to the first page of  
09:30:16 18 what you identified as your handwritten notes with regard  
09:30:20 19 to that document.

09:30:22 20 A. Yes.

09:30:23 21 Q. And if you could review just the top portion of that  
09:30:25 22 and see if that refreshes your recollection as to who made  
09:30:28 23 those notes?

09:30:28 24 A. It does.

09:30:29 25 Q. And who made those -- who made those green marks?

09:30:32 1 A. Me.

09:30:33 2 Q. And is there an explanation about what those green  
09:30:36 3 marks mean anywhere in Exhibit YYY?

09:30:41 4 A. The again, just referencing the yellow pieces of  
09:30:43 5 paper which would be my notes only, solid green equaled  
09:30:48 6 given out, and there's further writing by me associated  
09:30:51 7 with the numbers that are set forth in paragraph J.

09:30:57 8 Q. Now, turning back, and I apologize for jumping  
09:31:18 9 around a little bit but I want to make sure I cover  
09:31:20 10 everything. I'll take that back. Showing you again QQQ.

09:31:34 11 A. Yes.

09:31:34 12 Q. Which you had identified as a work product file copy  
09:31:38 13 that you have done of VanPatten, Anderson and Montgomery's  
09:31:44 14 statements. You had indicated that those documents were  
09:31:51 15 disclosed when to the -- to defense counsel?

09:31:55 16 A. They were disclosed to both defense attorneys. It  
09:32:01 17 was contained within the documents that specifically were  
09:32:05 18 given to Attorney Fahey December fourteen, 1994.

09:32:46 19 (Whereupon, there was a pause in the  
09:34:03 20 proceeding.)

09:34:03 21 Q. Showing you ZZZ again, in reviewing that document,  
09:34:09 22 did you make any notations with regard to Brady material in  
09:34:13 23 that document?

09:34:14 24 A. Yes.

09:34:16 25 Q. Once or a number of times?

09:34:18 1 A. A number of times. A number of times.

09:34:21 2 Q. All right, and then relaying that back to QQQ, you  
09:34:26 3 had indicated that you also made a note on QQQ about Brady  
09:34:32 4 material.

09:34:33 5 A. Yes, I did.

09:34:34 6 Q. Why did you do that both on ZZZ and on QQQ?

09:34:38 7 A. Part of my affirmative obligation was to make sure  
09:34:41 8 that attorneys Fahey and Walsh had any information or any  
09:34:46 9 property that may tend to be exculpatory, Brady material.  
09:34:49 10 When I was reviewing the documents, if arguably something  
09:34:53 11 fell within that definition of Brady material so that I  
09:34:58 12 identified it in the first instance when I was reviewing  
09:35:01 13 whatever the document would be, I would write the word  
09:35:06 14 Brady so that I would know that potentially it was Brady  
09:35:10 15 material, and I did that on QQQ, the statements of  
09:35:16 16 VanPatten, Anderson and Montgomery, and on ZZZ which is my  
09:35:23 17 work product I wrote Brady a number of times to make sure  
09:35:30 18 that I saw it, it was reproduced, it went over. By over I  
09:35:40 19 mean disclosed.

09:35:59 20 MR. MOODY: I have no further questions,  
09:36:01 21 Judge.

09:36:01 22 THE COURT: Ms. Bianco?

09:36:03 23 MS. BIANCO: Your Honor, do you think we can  
09:36:04 24 take a five-minute break so I can get my materials  
09:36:07 25 together?

09:36:07 1 THE COURT: That's fine. We'll reconvene at  
09:36:09 2 9:40.

09:36:14 3 (Whereupon, there was a recess.)

09:47:58 4 THE COURT: Mr. Dodd, please. Mr. Dodd,  
09:48:18 5 consider yourself still under oath sir.

09:48:19 6 THE WITNESS: Yes, sir.

09:48:20 7 THE COURT: Thank you.

09:48:21 8 RE CROSS-EXAMINATION

09:48:21 9 BY MS. BIANCO:

09:48:22 10 Q. Mr. Dodd, on redirect examination you were asked  
09:48:26 11 about document YYY and ZZZ. Do you remember those  
09:48:31 12 documents?

09:48:32 13 A. You're holding them in your hands, and yes.

09:48:35 14 Q. Okay, and were these two documents used to -- to  
09:48:40 15 create a response to Judge Walsh's motion that he filed?

09:48:46 16 A. No.

09:48:47 17 Q. They were not used at all to create the response to  
09:48:49 18 the discovery motion?

09:48:50 19 A. Didn't say that. As to the document that would be  
09:48:54 20 the -- can't remember the designation, it's all yellow.

09:48:59 21 Q. Let me show you --

09:49:00 22 A. Yes.

09:49:01 23 Q. Let me show you ZZZ. You said that this one was --

09:49:05 24 A. ZZZ.

09:49:06 25 Q. ZZZ. That's your handwritten notes about the topics

09:49:12 1 in the five boxes, correct?

09:49:15 2 A. Yes.

09:49:15 3 Q. Okay, and you said that you had made this document  
09:49:20 4 was it on 12/5/94?

09:49:24 5 A. The date 12/5, 1994 appears on it. This document  
09:49:29 6 reflects a work in progress over a number of days. The  
09:49:33 7 amount of material that we photocopied was in excess of  
09:49:36 8 twelve-thousand documents. This reflected a work in  
09:49:41 9 progress document that started prior to the discovery being  
09:49:46 10 turned over on December fourteen, 1994. It's not one day,  
09:49:52 11 miss, this was not one day.

09:49:53 12 Q. Not one day, so that would reflect -- when's the  
09:49:55 13 last time you wrote something on that? You said it's a  
09:49:59 14 work in progress. Was that right up until the trial, that  
09:50:02 15 particular document, were you still writing what was in the  
09:50:04 16 the boxes?

09:50:05 17 A. No, ma'am. You misconstrue what it is.

09:50:08 18 Q. Well, I'm asking you when that document, when was  
09:50:11 19 the last date you wrote on that document. When's the last  
09:50:15 20 date?

09:50:15 21 A. The last date I wrote something on it?

09:50:18 22 Q. Yes.

09:50:20 23 A. My best recollection would be that this document was  
09:50:28 24 utilized --

09:50:29 25 Q. I'm asking you for the date.

09:50:31 1 A. Ma'am --

09:50:31 2 THE COURT: He's trying to answer the  
09:50:33 3 question.

09:50:33 4 A. My best recollection as it relates to when I last  
09:50:37 5 wrote on this would be prior to December fourteen, 1994,  
09:50:44 6 best recollection.

09:50:45 7 Q. Best recollection.

09:50:46 8 A. Yes.

09:50:47 9 Q. Okay, may I see that for a second?

09:50:49 10 A. Sure.

09:50:51 11 Q. In this particular document --

09:51:08 12 THE COURT: Which document?

09:51:09 13 Q. I'm talking about ZZZ, and I'm going to show you the  
09:51:15 14 particular page, I'm going to show you a document on the  
09:51:44 15 top of it, it says, "sightings, Brady." Do you see that  
09:51:48 16 where it says that?

09:51:52 17 A. As part of ZZZ, yes.

09:51:55 18 Q. Do you see that?

09:51:58 19 A. I said yes.

09:51:58 20 Q. Okay, on the bottom, the very last line on that  
09:52:03 21 document, you have leads listed twelve oh-one to  
09:52:07 22 fourteen-hundred, is that right? That particular page.

09:52:10 23 A. On that particular page, yes.

09:52:13 24 THE COURT: Twelve oh-one to what?

09:52:14 25 THE WITNESS: Fourteen-hundred.

09:52:15 1 THE COURT: Thank you.

09:52:16 2 Q. Fourteen-hundred.

09:52:17 3 THE COURT: For the Court's reference, what  
09:52:19 4 page are you into on Z? Can you just simply count?

09:52:23 5 THE WITNESS: Yes, I can count.

09:52:25 6 THE COURT: Thank you.

09:52:27 7 THE WITNESS: Judge, that would be on the  
09:52:28 8 fifth page.

09:52:29 9 THE COURT: Thank you.

09:52:30 10 THE WITNESS: From ZZZ.

09:52:32 11 THE COURT: Thank you.

09:52:32 12 Q. Well, wasn't the lead fourteen-hundred created on  
09:52:38 13 4/28/95, and I'd like to show you your list of leads.

09:52:43 14 MS. BIANCO: I'd like to have this marked.  
09:52:52 15 One-sixty-four.

09:53:23 16 (Defendant's Exhibit No. 164 was marked for  
09:53:27 17 identification).

09:53:29 18 Q. Now showing you what's been marked Defendant's  
09:53:32 19 Exhibit 164, could you review that to yourself please?

09:53:37 20 (Whereupon, there was a pause in the  
09:53:44 21 proceeding.)

09:53:44 22 A. Yes.

09:53:44 23 Q. You would agree that during the course of this case,  
09:53:47 24 a list of leads was created numbering each lead, the date  
09:53:52 25 it was received and what the lead was, would you agree with



09:53:55 1 that?

09:53:56 2 A. There were a list of lead numbers created by  
09:54:02 3 Investigator Whipple, and then in addition to that,  
09:54:07 4 however, there would be distinction between a lead number  
09:54:11 5 and a lead sheet. I see numbers here.

09:54:15 6 Q. Okay, and the number there, well, have you ever seen  
09:54:19 7 that document before? It's date stamped by the Sheriff's  
09:54:23 8 Department isn't it?

09:54:24 9 A. Well, miss, I'm reviewing something that's got a  
09:54:26 10 date stamp of January fifth, 1995 and I haven't seen this  
09:54:30 11 in a bit.

09:54:30 12 Q. Are you sure it says January or June?

09:54:34 13 A. Thank you, ma'am. June fifth of 1995.

09:54:36 14 Q. And you reviewed every single document?

09:54:39 15 A. Ma'am, I haven't --

09:54:40 16 THE COURT: He's trying to review it right  
09:54:42 17 now, Ms. Bianco. Give him some time.

09:54:51 18 A. I've reviewed one-sixty-four, yes.

09:54:54 19 Q. And you did review every single document in the  
09:54:57 20 created file of the Sheriff's Department, correct?

09:55:00 21 A. Yes.

09:55:00 22 Q. Okay, now on that particular list, isn't  
09:55:05 23 fourteen-hundred the -- isn't that created on April  
09:55:10 24 twenty-eighth, 1995?

09:55:18 25 A. I see fourteen-hundred and then I see handwriting by

09:55:22 1 someone and I see a different date. Yes.

09:55:26 2 Q. The date is what?

09:55:28 3 A. 4/28, 1995. This is not in my hand, miss.

09:55:32 4 Q. Okay, so this -- this log that says received Oswego  
09:55:36 5 County Sheriff's Department, this wouldn't be an accurate  
09:55:39 6 log?

09:55:39 7 A. I didn't say that. I said that this is a document  
09:55:42 8 that I'm reviewing, having not seen it probably for twenty  
09:55:46 9 years, and its writing, it has certain lead numbers, it has  
09:55:52 10 certain names, it has certain dates. It is not in my hand.

09:55:56 11 Q. Okay, well, I'd like to show you another --

09:55:59 12 MS. BIANCO: I'd offer that. It's from the  
09:56:01 13 Sheriff's Department's file, it's date stamped, it was  
09:56:04 14 provided to us by the prosecutor.

09:56:06 15 THE COURT: Any objection?

09:56:08 16 MR. MOODY: No objection.

09:56:09 17 THE COURT: Is that 162?

09:56:12 18 THE WITNESS: One-six-four, Your Honor.

09:56:13 19 THE COURT: One-six-four is in.

20 (Defendant's Exhibit No. 164 is received in  
09:56:15 21 evidence).

09:56:15 22 MS. BIANCO: I'd like this marked as 165  
09:56:21 23 please if I could.

09:56:49 24 (Defendant's Exhibit No. 165 was marked for  
09:56:56 25 identification).

09:56:56 1 Q. Could you take a look, Mr. Dodd, at Exhibit YYY  
09:56:59 2 again, the first page which is paragraph J, the last  
09:57:05 3 numbered lead. What lead is that?

09:57:09 4 A. The number I see here is what appears to be  
09:57:13 5 one-four-oh-nine.

09:57:13 6 Q. One-four-oh-nine. Are you looking at paragraph J?

09:57:18 7 A. On Exhibit 164, I'm sorry.

09:57:20 8 Q. No, YYY.

09:57:22 9 THE COURT: YYY, sir.

09:57:24 10 THE WITNESS: I don't have YYY.

09:57:27 11 Q. Did I take it back from you? I'm not sure.

09:57:29 12 A. I don't have it.

09:57:34 13 THE COURT: I'm not sure if you gave him YYY.

09:57:37 14 You took it back.

09:57:38 15 Q. I have it, YYY, okay (handing).

09:57:42 16 A. Okay, I have YYY.

09:57:45 17 Q. Okay, the number of the last lead in paragraph J,  
09:57:52 18 what's the number of that?

09:57:53 19 A. In paragraph J, this is Attorney Walsh's paragraph,  
09:57:57 20 is one-three-six-seven within paragraph J.

09:58:01 21 Q. And was it your testimony that you reviewed -- you  
09:58:09 22 reviewed materials before that -- strike that. On ZZZ.

09:58:17 23 A. Yes.

09:58:17 24 Q. This was done on December fifth?

09:58:20 25 A. Again, I explained to you, miss, no. There are

09:58:24 1 dates that appear December fifth, 1994. There were twelve-  
09:58:29 2 thousand documents at least, twelve-thousand documents that  
09:58:33 3 were photocopied. That did not happen in a day. This was  
09:58:37 4 a document that was over days when there was a reproduction  
09:58:43 5 of the twelve-thousand plus documents. This ZZZ was the  
09:58:50 6 document that I created for the purposes of being  
09:58:52 7 systematic and organized to verify it. What it is that we  
09:58:57 8 had, what was being photocopied, to be able to, for  
09:59:01 9 example, if this day ever came, be able to refresh my  
09:59:04 10 recollection.

09:59:05 11 Q. Well, would you agree that since you have listed on  
09:59:08 12 this document ZZZ on page three, excuse me.

09:59:19 13 MR. MOODY: Three or five?

09:59:20 14 Q. Page five, twelve oh-one to fourteen-hundred that  
09:59:24 15 you were at least writing on this document in April of  
09:59:29 16 1995, would you agree with that, in light of the number  
09:59:32 17 fourteen-hundred lead which was created on -- in April?

09:59:39 18 A. No, ma'am. You misunderstood it. I have to explain  
09:59:42 19 it this way. It's the only way I can --

09:59:44 20 Q. I'll ask you another question. Were you still --  
09:59:46 21 this is --

09:59:47 22 MR. MOODY: Judge, he's trying to answer the  
09:59:48 23 question and she doesn't want him to.

09:59:50 24 MS. BIANCO: No, he's non-responsive, Judge.  
09:59:52 25 He's answering what he wants.

09:59:53 1 THE COURT: He's very responsive, Ms. Bianco.  
09:59:56 2 Go ahead.

09:59:57 3 MR. MOODY: Could he finish?

09:59:58 4 THE COURT: Yeah.

09:59:58 5 A. The lead number comes in at a certain time. If a  
10:00:05 6 lead sheet is tasked by Investigator Whipple, again, this  
10:00:09 7 wasn't I, tasked by Investigator Whipple, there would be  
10:00:12 8 the lead number put on a lead sheet, so for example  
10:00:16 9 one-sixty-four you handed me, it has numbers, and then  
10:00:20 10 you're referencing certain dates. That does not mean  
10:00:23 11 that's the date the lead came in. That means -- it could  
10:00:27 12 be -- it could mean a number of things. You'd have to look  
10:00:29 13 to the lead itself. It could be the date that the officer  
10:00:32 14 did something or supplied something.

10:00:36 15 MS. BIANCO: Judge, we're in the process of  
10:00:37 16 trying to print out that particular lead sheet right  
10:00:40 17 now so I can get back to that.

10:00:42 18 THE COURT: That's fine.

10:00:44 19 MS. BIANCO: If you don't mind.

10:00:46 20 THE COURT: That's fine.

10:00:47 21 Q. On ZZZ, this detailed and systematic and organized  
10:00:53 22 document that --

10:00:55 23 MR. MOODY: Objection, Judge.

10:00:55 24 THE COURT: Ms. Bianco, let's not editorialize  
10:00:59 25 please.

10:00:59 1 Q. Show me where in this twenty-two page document,  
10:01:02 2 where you list confidential informant information on Heidi  
10:01:06 3 Allen, anywhere in this twenty-two page document written in  
10:01:10 4 your own hands. Do you have ZZZ up front?

10:01:15 5 A. I'm looking at it as we speak, miss.

10:01:26 6 (Whereupon, there was a pause in the  
10:03:17 7 proceeding.)

10:03:17 8 A. Police reports. Page one, two, three, page four,  
10:03:22 9 police reports.

10:03:24 10 Q. That's how you itemize the -- the confidential  
10:03:27 11 informant documents as police reports?

10:03:29 12 A. That's what they were, miss. They were reports of  
10:03:33 13 the Oswego County Sheriff's Department, the police report  
10:03:38 14 of the Oswego County Sheriff's Department, so it's as clear  
10:03:41 15 as I can make it, the Sheriff's -- I'm answering the  
10:03:45 16 question. The Sheriff's Department investigation report  
10:03:50 17 contained the typed or handwritten reports, the  
10:03:55 18 supplemental reports of police officers with the Sheriff's  
10:03:58 19 Department, and any statements that the police officer may  
10:04:01 20 have created associated what he or she may have done and  
10:04:06 21 any notes that they may have taken that were part of police  
10:04:10 22 reports. The documents that specifically Heidi Allen was  
10:04:14 23 referenced as providing confidential informant clearly are  
10:04:19 24 police reports of the Oswego County Sheriff's Department,  
10:04:22 25 and they were contained within that portion of the file and

10:04:26 1 in my original hand on page -- page four, designation  
10:04:33 2 police reports, green check. That documentation, green  
10:04:38 3 check, meant it was photocopied and turned over. That was  
10:04:42 4 part of the police report, and it was turned over to  
10:04:45 5 Attorney Fahey. That's where it is.

10:04:47 6 Q. I want to show you the last page of this document.

10:04:52 7 A. ZZZ.

10:04:53 8 Q. ZZZ which is written in your own hand. Do you  
10:04:56 9 itemize the different police officers from the Oswego  
10:05:01 10 County Sheriff's Department, do you itemize the officers  
10:05:05 11 one by one?

10:05:06 12 A. Those --

10:05:07 13 Q. Yes or no?

10:05:08 14 A. It's not a yes or no answer.

10:05:09 15 MS. BIANCO: Judge, this is as clear as a yes  
10:05:12 16 or no question as I can possibly ask.

10:05:14 17 THE COURT: Hold on. Hold on. He can answer  
10:05:15 18 it yes or no. You can then redirect. Recross.

10:05:27 19 Q. So my question to you, sir, is -- well, let me ask  
10:05:30 20 you specific one by one. Do you list an individual by the  
10:05:34 21 name of Bill Cromie on the last page of ZZZ, yes or no?

10:05:40 22 A. I wrote the name Bill Cromie which reflects a  
10:05:44 23 portion of the file that was as I've indicated earlier in  
10:05:50 24 the entirety of the file there were sub-files for lack of a  
10:05:54 25 better description. There was a sub-file with the name

10:05:57 1 Bill Cromie. I wrote down what it is that was within the  
10:06:02 2 overall file. There was one heading entitled Bill Cromie,  
10:06:06 3 yes.

10:06:06 4 Q. And there was another subheading. Bill Cromie is --  
10:06:09 5 was a member of the Oswego County Sheriff's Department,  
10:06:12 6 correct?

10:06:12 7 A. He absolutely was, yes, ma'am.

10:06:14 8 Q. Jeff Biznik (ph), he was a member of the Sheriff's  
10:06:17 9 Department, correct?

10:06:17 10 A. At the time, yes, ma'am.

10:06:19 11 Q. And he had an individual file, sub-file here you  
10:06:21 12 list?

10:06:21 13 A. I've got his name down, yes.

10:06:23 14 Q. Okay, Dean Goodsell, part of the Sheriff's  
10:06:25 15 Department?

10:06:25 16 A. Yes.

10:06:26 17 Q. And he was listed individually wasn't he?

10:06:29 18 A. There was a file with his name on it, yes.

10:06:31 19 Q. Sumner --

10:06:32 20 A. Hall.

10:06:33 21 Q. Hall, Sheriff's Department?

10:06:35 22 A. Yes.

10:06:35 23 Q. Individual file you listed?

10:06:36 24 A. Yes.

10:06:37 25 Q. Nick Kleist, individual file?



10:06:40 1 A. Yes.

10:06:41 2 Q. Fred Linny, individual file?

10:06:45 3 A. Ling, yes. Robert Lighthall.

10:06:52 4 Q. Robert Lighthall, was he with the Sheriff's

10:06:53 5 Department?

10:06:53 6 A. Yes.

10:06:54 7 Q. And he made -- you had a note that he had an

10:06:56 8 individual file?

10:06:57 9 A. I wrote down --

10:06:58 10 Q. I'm asking if you have this note.

10:07:00 11 A. I -- it speaks for itself. I -- I wrote the names

10:07:04 12 that appear on it, miss.

10:07:05 13 Q. Okay, and I want to go through the names. Ralph

10:07:08 14 Scruton, you have his name individually don't you?

10:07:09 15 A. Speaks for itself.

10:07:10 16 Q. Is that a yes?

10:07:11 17 A. Yes.

10:07:12 18 Q. Reuel Todd, individual file?

10:07:16 19 A. The name appears on the last page of the exhibit,

10:07:19 20 yes.

10:07:19 21 Q. Rodney Watson, individual file?

10:07:22 22 A. Appears on the last page of the exhibit, yes.

10:07:24 23 Q. Terry Whipple, individual file?

10:07:26 24 A. Yes. It appears on the last page of that exhibit.

10:07:31 25 Q. Dale Yager, same thing, individual file?

- 10:07:35 1 A. Appears on the last page of that page, yes.
- 10:07:36 2 Q. Herb Yerdon, correct?
- 10:07:37 3 A. Yes, that also appears.
- 10:07:39 4 Q. And you have little green check marks next to all of
- 10:07:41 5 those documents, all those names, correct?
- 10:07:43 6 A. I have check marks, yes.
- 10:07:45 7 Q. And that means that was given to the defense,
- 10:07:47 8 correct?
- 10:07:48 9 A. This was -- to best answer your question, to fairly
- 10:07:54 10 answer your question, the actual file had the green check
- 10:08:01 11 marks on it. This was merely something I was using to
- 10:08:06 12 insure that we were reproducing the twelve-thousand plus
- 10:08:11 13 documents of the file so the original file would have the
- 10:08:14 14 green check that appeared on that original file. This was
- 10:08:19 15 a document that I used to insure that that portion of the
- 10:08:24 16 file was identified by me because there's a vast volume.
- 10:08:27 17 Q. Right, and that's why you separated in your notes
- 10:08:31 18 each section by boxes, correct, because you wanted to be
- 10:08:34 19 detailed.
- 10:08:35 20 A. I didn't separate anything.
- 10:08:37 21 Q. Well, did you --
- 10:08:38 22 A. Do you want me to answer the question? I'll answer
- 10:08:40 23 it.
- 10:08:40 24 Q. In your notes.
- 10:08:41 25 A. In my notes.

10:08:42 1 Q. Did you write on the top of the first page first  
10:08:45 2 box?

10:08:45 3 A. Sheriff's Department first box, yes.

10:08:48 4 Q. And so in that first page of notes are all of the  
10:08:52 5 individual files contained in the first box, yes?

10:08:55 6 A. I believe yes.

10:08:57 7 Q. Okay, so in your notes, you tried to separate box by  
10:09:01 8 box what the individual files was, is that fair?

10:09:04 9 A. I wrote down the files that I saw in the boxes and  
10:09:08 10 correlated to the box I was looking at, yes, again, because  
10:09:12 11 of the volume.

10:09:17 12 Q. Nowhere on the individual files on that list do you  
10:09:23 13 have anything by Investigator Montgomery, nowhere on that  
10:09:28 14 list Investigator Montgomery, Defendant's Exhibit 8, it's  
10:09:32 15 not referenced there is it?

10:09:33 16 A. It is referenced there. As I said before, it's  
10:09:35 17 referenced under police reports. It's a report of a police  
10:09:39 18 officer.

10:09:39 19 Q. Wasn't that an internal memo?

10:09:42 20 MR. MOODY: Objection, Judge. He's described  
10:09:44 21 it. She wants to argue whether --

10:09:46 22 THE COURT: Right. It's argumentative.

10:09:47 23 MR. MOODY: He's describing it as he's  
10:09:49 24 described it.

10:09:50 25 THE COURT: I will sustain.

10:09:50 1 Q. So for some police officers you have individual  
10:09:52 2 files and for some you just throw them in a big category  
10:09:56 3 police reports?

10:09:56 4 MR. MOODY: Objection, Judge. That's  
10:09:58 5 argumentative.

10:09:58 6 THE COURT: Sustained.

10:09:59 7 MR. MOODY: He didn't divide these files up as  
10:10:02 8 he's explained.

10:10:03 9 THE COURT: Sustained.

10:10:03 10 Q. Well, would you agree that there are no individual  
10:10:07 11 files listed in your own handwritten notes that reference  
10:10:13 12 Deputy VanPatten, individual file reference that says  
10:10:17 13 Deputy VanPatten.

10:10:18 14 A. On -- on -- you're referencing ZZZ?

10:10:21 15 Q. ZZZ.

10:10:22 16 A. Yes, ma'am. One second.

10:11:24 17 (Whereupon, there was a pause in the  
18 proceeding.)

10:11:53 19 A. I've inspected all of ZZZ. I did not write down  
10:11:56 20 Chris VanPatten, no.

10:11:57 21 Q. Okay, would you also agree on ZZZ that there is no  
10:12:02 22 individual file marked specifically Deputy Anderson. Would  
10:12:07 23 you agree with that statement?

10:12:10 24 A. Well, I could look through it all again but I don't  
10:12:13 25 believe I saw it, miss. I did not write down Anderson. I

10:12:16 1 don't see that.

10:12:16 2 Q. Okay, and the same question in regards to  
10:12:22 3 Montgomery, he's not listed individually is he in your ZZZ  
10:12:26 4 handwritten notes?

10:12:27 5 A. I don't see the name Montgomery. Actually there was  
10:12:30 6 a Montgomery but it's a different Montgomery.

10:12:33 7 Q. Okay, thank you, sir.

10:12:35 8 A. I don't see the name Michael Montgomery that you're  
10:12:38 9 referencing, no, I didn't write down Michael Montgomery.

10:12:42 10 Q. Okay. Now I want to direct your attention now to  
10:12:52 11 Exhibit YYY. Do you have that one up there?

10:12:55 12 A. Yes.

10:12:56 13 Q. Or did I take it back. Okay. Was YYY, the document  
10:13:02 14 you used, the notes by another person and the yellow notes,  
10:13:06 15 was that a document you used to create the response for  
10:13:11 16 Judge Walsh's motion paragraph J, the one we talked about,  
10:13:17 17 the alleged missing lead sheets. Did you use this document  
10:13:21 18 in order to create your response?

10:13:22 19 A. I reviewed what it is that apparently was created by  
10:13:28 20 Investigator Yerdon, correction, Investigator Whipple, but  
10:13:34 21 principally it would have been my notes, and looking at my  
10:13:37 22 notes, which was merely a portion of the work product.  
10:13:41 23 This -- my notes and those notes were just be a portion of  
10:13:45 24 the work product. Ultimately my responsibility was to  
10:13:48 25 craft the response which I did.

10:13:51 1 Q. Okay, and was it your testimony on Wednesday that  
10:13:58 2 every lead that Attorney Walsh claimed he did not get, that  
10:14:05 3 you had actually already provided in December, was that  
10:14:07 4 your testimony?

10:14:08 5 A. You've asked me to recall one portion of my six  
10:14:11 6 hours of testimony from Wednesday and I'm afraid I just  
10:14:14 7 can't recall that part.

10:14:15 8 Q. Okay. Well, let me ask you the question again. Is  
10:14:20 9 the leads that Attorney Walsh claimed he didn't receive,  
10:14:24 10 the hundred and forty leads that he claimed he didn't  
10:14:28 11 receive, is it your testimony now today that he received  
10:14:33 12 all of those in December of 1994, is that your testimony?

10:14:38 13 A. My testimony is that the response to the motion  
10:14:41 14 submitted by Attorney Walsh would have to speak for itself  
10:14:45 15 as to the specific numbers, Ms. Bianco. Referencing  
10:14:51 16 paragraph J, to answer it fairly, referencing paragraph J,  
10:14:54 17 there are a number of numbers.

10:14:56 18 Q. Yes, very true.

10:14:58 19 A. My response that would have been in February of 1995  
10:15:05 20 would reflect the best recollection and the clearest  
10:15:08 21 recollection as it relates to those particular numbers. I  
10:15:14 22 can't testify here today as to these particular numbers.  
10:15:17 23 I -- it just -- I can testify as to Heidi Allen as a  
10:15:22 24 confidential informant, whether or not she was, I can  
10:15:25 25 testify to Mr. Breckenridge, the things Mr. Fahey

10:15:30 1 referenced in his deposition. These, however, is not  
10:15:33 2 something that I have a clear enough recollection of today  
10:15:38 3 to be able to testify reliably.

10:15:40 4 Q. Okay, so would it be fair to say that you're unsure  
10:15:44 5 whether all of those leads were provided, the leads that  
10:15:48 6 Attorney Walsh cited in his motion, part J, were all --  
10:15:53 7 you're unsure whether they were provided in December of  
10:15:56 8 1994?

10:15:57 9 A. No, I didn't say that. I said my motion would have  
10:16:00 10 to speak for itself. I can testify in response to that  
10:16:04 11 question that I believe in my motion response to JJJ, I  
10:16:12 12 listed three -- three-quarters of the numbers that he  
10:16:18 13 listed in J as having been turned over.

10:16:21 14 Q. Um hum?

10:16:22 15 A. And that there were also numbers that he honestly  
10:16:26 16 thought existed but did not. For example, in JJJ which I'm  
10:16:31 17 looking at, if memory serves correctly, he cited that he  
10:16:34 18 had not received number six-five-zero through six-six-nine.  
10:16:40 19 Because I refreshed my memory by looking at my motion  
10:16:43 20 response, I saw that there were no lead numbers six-five-  
10:16:47 21 zero through six-six-nine, that there were -- that the best  
10:16:55 22 response to JJJ would be reflected in my motion response,  
10:16:59 23 ma'am.

10:17:00 24 Q. Okay, now in Exhibit YYY, in your portion of the  
10:17:07 25 handwritten notes, and I would direct your attention to

10:17:12 1 page seven of the entire document.

10:17:15 2 A. Seven?

10:17:16 3 Q. At the very bottom.

10:17:18 4 A. Are you talking about the yellow pages?

10:17:20 5 Q. Yellow pages.

10:17:21 6 A. Thank you. Yes.

10:17:32 7 Q. You have a notation nine-eight-nine, one-oh-nine-  
10:17:36 8 five, not given to defendant attorney.

10:17:40 9 THE COURT: Could you say that again? Nine-  
10:17:42 10 eight-nine --

10:17:42 11 Q. Nine-eight-nine to one-oh-nine-five, not given to  
10:17:47 12 defendant attorney.

10:17:48 13 A. I'm looking at the page that you've referenced and  
10:17:52 14 that doesn't contain that.

10:17:54 15 Q. Look at the very top of the page, you see if we're  
10:17:57 16 on the same page. It says solid green equals given out.  
10:18:04 17 Circled green, duplicate.

10:18:07 18 A. And given over.

10:18:09 19 Q. Okay, so on the bottom of that page, nine-  
10:18:13 20 eighty-nine, and it says dash-one oh-nine-five it looks  
10:18:16 21 like, not given to defendant attorney. Is that your  
10:18:20 22 handwriting?

10:18:20 23 A. I'm looking at the first page of the yellow portion.  
10:18:24 24 I see nine-eighty-nine, and again, this would be work  
10:18:28 25 product at the time, doesn't mean it's the final work



10:18:31 1 product, it means something that I was using to assist me  
10:18:35 2 in crafting the final response. Again, the final response  
10:18:38 3 has to speak for itself. Written here nine-eighty-nine was  
10:18:43 4 assigned a lead number and placed in followup, but no  
10:18:47 5 followup, so it -- as I said before, there was a lead  
10:18:51 6 number, but if -- there may not have been a lead sheet.  
10:18:55 7 There's a distinction between a lead number and a lead  
10:18:58 8 sheet so it -- the note I have written down here is that  
10:19:02 9 there was no followup done.

10:19:04 10 Q. It also says "not given to defendant attorney,"  
10:19:06 11 correct?

10:19:06 12 A. Because there was nothing done. It's a lead number  
10:19:10 13 as opposed to a lead sheet. If there was nothing done,  
10:19:13 14 there's nothing to give over if there was nothing done.

10:19:17 15 Q. And speaking of the actual lead sheet --

10:19:22 16 THE COURT: Before you go on, Ms. Bianco, you  
10:19:24 17 referenced page seven. What yellow page is that? Is  
10:19:27 18 that page one?

10:19:28 19 MS. BIANCO: It's on the very top, it says  
10:19:30 20 "solid green."

21 MR. MOODY: First yellow page.

10:19:32 22 MS. BIANCO: Yes, looks like the first yellow  
10:19:34 23 page.

10:19:34 24 THE COURT: It's the first yellow page, okay.

10:19:53 25 Q. And were you crafting your answer based on the lead

10:19:57 1 numbers and the lead sheets?

10:19:59 2 A. Do you mean this portion of my response?

10:20:02 3 Q. Yes.

10:20:02 4 A. It's an overall large motion. This was one part of  
10:20:06 5 the motion.

10:20:06 6 Q. Um hum.

10:20:06 7 A. The final work product which would be my motion  
10:20:10 8 answer would have to speak for itself. I was referencing  
10:20:15 9 in part what I've done. Again, this was merely a part of  
10:20:18 10 it, it's a work in progress, it's not the finished work  
10:20:21 11 product. The finished work product would be the finished  
10:20:24 12 work product. There could be additional information I  
10:20:27 13 obtained, that there's nothing written on this because it's  
10:20:30 14 after I created these notes. This was literally to assist  
10:20:33 15 me in formulating as best I could an accurate response to  
10:20:38 16 the particular portion of Attorney Fahey, or correction,  
10:20:42 17 Attorney Walsh's demand for bill of particulars.

10:20:45 18 Q. Well, a lead sheet, in your words, did you tell  
10:20:54 19 this, when the Court asked you what exactly a lead sheet  
10:20:57 20 is, on December eighth, 1994, the Court asked you what a  
10:21:01 21 lead sheet was, and you said, tell me if this is true --

10:21:04 22 A. Ma'am I, have no idea what you're -- December eighth  
10:21:06 23 of 1994? You ask me if I remember something from December  
10:21:10 24 eight of 1994?

10:21:11 25 Q. The motion argument, the --

10:21:13 1 A. Okay, you're asking me about the motion argument.

10:21:15 2 Yes, ma'am.

10:21:15 3 Q. Yes. Did you tell the Court that a lead sheet as it  
10:21:19 4 applies to this particular case is a series of papers that  
10:21:24 5 are stapled together, and as leads from whatever source  
10:21:27 6 they may be, whether they be telephone leads where an  
10:21:34 7 individual calls in and identifies themselves or calls in  
10:21:36 8 to the police station, that person's name would be written  
10:21:39 9 down and then a number would be assigned and that would be  
10:21:42 10 established as a lead, and then action, thereafter, in  
10:21:46 11 terms of what action if any was taken, sometimes it was  
10:21:50 12 written down on a lead sheet. Would that be a fair  
10:21:53 13 assessment of what a lead sheet is?

10:21:55 14 A. I have to look at the documents. Are you reading  
10:21:57 15 from a transcript?

10:21:58 16 MS. BIANCO: Page two to page three. I'm  
10:22:00 17 going to show you -- do you want me show him the actual  
10:22:04 18 exhibit? I have these taken out of the exhibit.

10:22:06 19 THE COURT: Can you find them in the exhibit?

10:22:08 20 MS. PEEBLES: Exhibit 6, the hearing  
10:22:10 21 transcript.

10:22:10 22 MS. BIANCO: I have Exhibit 6.

10:22:12 23 THE COURT: Two through three on Exhibit 6.  
10:22:14 24 Probably best, Ms. Bianco, to show him the actual  
10:22:19 25 exhibit.

10:22:28 1 A. What page am I looking at?

10:22:30 2 Q. Pages two to three please.

10:22:32 3 A. Thank you.

10:22:33 4 THE COURT: All of two or a portion of two?

10:22:35 5 MS. BIANCO: The bottom of two to the top of  
10:22:38 6 three.

10:22:38 7 THE WITNESS: One second, Your Honor.

10:22:39 8 THE COURT: Sure.

10:22:40 9 (Whereupon, there was a pause in the  
10:23:08 10 proceeding.)

10:23:08 11 A. I've read page two and page three, yes.

10:23:10 12 Q. Okay, would that have been an accurate description  
10:23:13 13 of what a lead sheet was?

10:23:14 14 A. It speaks for itself, miss. The -- it was a  
10:23:17 15 response -- no. Would it be a complete description?  
10:23:21 16 Absolutely not. This is merely a portion of oral argument.  
10:23:25 17 This is amongst a number of issues that are being orally  
10:23:29 18 argued so that I would have said something in response as  
10:23:32 19 part of oral argument to one aspect of the overall motion,  
10:23:36 20 but to correctly answer and completely answer the question,  
10:23:40 21 as I've said, there's a difference between a lead number  
10:23:43 22 and a lead sheet. This in part describes lead sheets and  
10:23:46 23 actions that could occur which is different from a lead  
10:23:49 24 number, so this is not a complete description to answer  
10:23:52 25 your question of what a lead sheet and a lead number is,

10:23:54 1 no.

10:23:54 2 Q. Didn't the presiding judge specifically ask you --

10:24:01 3 THE COURT: Page reference?

10:24:02 4 Q. I'm going to reference page two. The Court: "With  
10:24:08 5 respect to the arguments of the motions, before we begin,

10:24:12 6 would you tell me what it is that you mean by a lead  
10:24:16 7 sheet." Didn't he ask specifically what a lead sheet was?

10:24:19 8 A. Well, miss, if it says it I accept it says it.

10:24:22 9 Q. You're not saying you in any way gave an incorrect  
10:24:26 10 answer to the presiding judge.

10:24:28 11 MR. MOODY: The answer's reflected in the  
10:24:30 12 transcript.

10:24:31 13 THE COURT: Sustained.

10:24:35 14 Q. Let's talk about the CI documents again. You  
10:24:39 15 acknowledge yesterday during Mr. Moody's direct examination  
10:24:43 16 that you considered those documents Brady material and  
10:24:46 17 that's why you turned them over, correct?

10:24:49 18 MR. MOODY: Actually I think it was Wednesday.

10:24:52 19 Q. I'm sorry, Wednesday, you acknowledge that was Brady  
10:24:54 20 material.

10:24:54 21 A. You're specifically referencing the police reports  
10:24:57 22 of Investigator VanPatten, Anderson, Montgomery, Lortie, is  
10:25:02 23 that correct?

10:25:02 24 Q. As well as the entry, the card itself. I'll show  
10:25:08 25 you the exhibit.

10:25:09 1 A. And the card.

10:25:19 2 Q. People's Exhibit B. (Handing).

10:25:46 3 A. Am I waiting for a question?

10:25:48 4 Q. I'm asking you for an answer. Did you consider all  
10:25:51 5 of those reports as well as the documents in Exhibit B  
10:25:55 6 Brady material?

10:25:57 7 A. In Exhibit B, there is a portion of Exhibit B that  
10:26:06 8 appears to fall within the definition of Brady material.  
10:26:09 9 Specifically, it would be the photograph of Heidi. And  
10:26:13 10 also a three by five index card that has Heidi Allen and  
10:26:19 11 descriptors on the front and on the back, apparent  
10:26:22 12 fingerprint impressions. The other documents appear just  
10:26:26 13 to be field notes or notes of individuals. These two  
10:26:31 14 portions are of -- are of Heidi Allen, and then also to  
10:26:37 15 answer your question, the reports of Investigator Anderson  
10:26:41 16 VanPatten, Lortie, Montgomery, yes.

10:26:45 17 Q. Okay, there's also in People's Exhibit B some --  
10:26:50 18 some notes that are written regarding drug information and  
10:26:54 19 names. You've seen that before haven't you?

10:26:57 20 A. Well, it's compound, but I see -- I see names, miss,  
10:27:32 21 contained within B, and I've looked at the other portions  
10:27:36 22 of Exhibit B, it's -- I don't know whose handwriting it is.  
10:27:41 23 It just appears to have various things that are written  
10:27:44 24 down, miss.

10:27:45 25 Q. Okay, did you ever see that, those notes before?

10:27:50 1 A. By the notes you mean the writings?

10:27:51 2 Q. Yes, those writings, did you ever see them before?

10:27:54 3 A. I would have seen them. They would have been in  
10:27:56 4 evidence. They're in an evidence bag.

10:27:59 5 Q. Now, when you stated earlier that when you were  
10:28:04 6 constructing your response to Judge Walsh's motion, the  
10:28:13 7 discovery motion, and also the motions by Judge Fahey, you  
10:28:17 8 wrote a letter dated December twenty-first, 1994, and that  
10:28:22 9 was Defendant's Exhibit 13, and I can show you that again.

10:28:27 10 A. Thank you.

10:28:51 11 (Whereupon, there was a pause in the  
10:29:01 12 proceeding.)

10:29:01 13 A. I have reviewed thirteen, yes.

10:29:05 14 Q. And that was written on December fourteenth,  
10:29:07 15 correct?

10:29:07 16 A. No. Well, it's -- the date appears December  
10:29:09 17 twenty-first, 1994.

10:29:10 18 Q. I apologize, December twenty-first. Is that when it  
10:29:13 19 was -- that was when the last time you signed it on that  
10:29:16 20 date, correct?

10:29:16 21 A. That's the date at the top of the letter.

10:29:18 22 Q. Okay, and would you agree that you used the  
10:29:22 23 information contained in the People's Exhibit YYY, the  
10:29:27 24 handwritten yellow notes and the handwritten notes from  
10:29:31 25 Investigator Whipple in determining what your response was

10:29:35 1 going to be?

10:29:35 2 A. No, not in this at all. You're misconstruing this.  
10:29:38 3 This is just prior to that. This is December twenty-first,  
10:29:41 4 1994, this letter. The document you held in your hand was  
10:29:44 5 part of the work product that would be the motion response,  
10:29:47 6 I believe I wrote if I recall correctly, motion response  
10:29:51 7 was February eleventh, 1995. Exhibit 13 is two and a half  
10:29:56 8 months prior to that date.

10:29:59 9 Q. But on December twenty-first, you would have had the  
10:30:07 10 reports by investigators Anderson, Montgomery and VanPatten  
10:30:13 11 regarding the confidential informant files, right?

10:30:16 12 A. Yes.

10:30:16 13 Q. You had those.

10:30:17 14 A. Yes.

10:30:18 15 Q. Do you specifically say in your letter, and I'm  
10:30:21 16 going to need that for a second. Thank you, sir.

10:30:25 17 A. Yes.

10:30:25 18 Q. On page three are you specifically directing the  
10:30:35 19 attorneys to information that you contend could be possibly  
10:30:42 20 so-called Brady material. You may wish to consider that  
10:30:46 21 portion of the following that deals with the following.  
10:30:49 22 I'm going to show you this.

10:30:50 23 A. Yes, if I could look, review it please.

10:30:54 24 Q. And I'm referring to paragraph -- paragraph five.

10:31:05 25 MR. MOODY: They're not numbered. Are you



10:31:07 1 saying the fifth paragraph?

10:31:08 2 MS. BIANCO: Fifth paragraph on that -- on  
10:31:09 3 that page.

10:31:10 4 A. It's page three of the exhibit, it's the bottom  
10:31:13 5 paragraph five. Paragraph five is after paragraph three  
10:31:22 6 which identifies in response to the demand for Brady  
10:31:26 7 material. The paragraph three, four, correction, three,  
10:31:32 8 four, five and six all deal with Brady response.

10:31:37 9 Q. Right, and you --

10:31:38 10 A. All of it.

10:31:38 11 Q. You were directing, trying to show the attorneys  
10:31:41 12 where, because it's such a voluminous file, where there may  
10:31:47 13 be Brady material, and you're specifying things aren't you?

10:31:49 14 A. What I did is first it's the affirmative obligation  
10:31:53 15 to disclose the evidence or information property that may  
10:31:57 16 tend to be exculpatory. If I believed it was Brady  
10:32:00 17 material, it was my affirmative obligation to disclose it.  
10:32:05 18 I did so in this particular letter dated December  
10:32:10 19 twenty-first, 1994 starting in paragraph three, in the  
10:32:14 20 motion presently filed in County Court, you demanded all  
10:32:17 21 Brady material. Thereafter, I listed everything that  
10:32:22 22 potentially could be Brady material. They ultimately  
10:32:25 23 decide whether or not it's Brady material, I don't in the  
10:32:28 24 first instance, I make a determination preliminarily, but  
10:32:31 25 they have to decide whether or not it would tend to assist

10:32:34 1 them in their own defense, and I specifically reference  
10:32:37 2 Brady material and the Oswego County Sheriff's Department  
10:32:40 3 investigation report which contained the depositions,  
10:32:44 4 statements of the police officers, yes, ma'am.

10:32:46 5 Q. Okay, but when you're trying to specify what  
10:32:49 6 information may be Brady material, you're being very, very  
10:32:54 7 detailed on that letter. Do you want me to go through the  
10:32:57 8 letter with you?

10:32:58 9 A. You don't have to but you can if you want.

10:33:00 10 Q. Well, let's talk a little bit about that.

10:33:03 11 A. Why don't we. I apologize, ma'am.

10:33:15 12 Q. Do you need some water?

10:33:17 13 A. No, thank you. I apologize for the last remark.

10:33:23 14 Q. Paragraph four starts with, "The report we provided  
10:33:28 15 you identifies a number of different forms of information  
10:33:31 16 that came to the Sheriff's Department in the form of  
10:33:35 17 potential leads. To the extent that you construe this  
10:33:40 18 information to be so-called Brady material, you may wish to  
10:33:43 19 consider that portion of the file that deals with the  
10:33:47 20 following." Now in this paragraph, you were trying to show  
10:33:51 21 the attorneys this is such a large file, here's what you  
10:33:54 22 may want to look at. Would that be a fair statement?

10:33:56 23 A. I referenced that those items potentially could be  
10:34:00 24 Brady material. Could be Brady material, yes.

10:34:04 25 Q. Okay, thereafter, in a single -- in single spaced

10:34:10 1 typewritten form, you go on in two and a half pages to list  
10:34:17 2 hundreds of different items, is that correct?

10:34:21 3 A. I would -- I've saw it when I last testified, but I  
10:34:25 4 recall that there was a listing at that paragraph of  
10:34:29 5 different potential areas, yes, I do recall that.

10:34:32 6 Q. And part of those different potential areas, you  
10:34:39 7 also list individual police reports by individual officers  
10:34:46 8 of the Oswego County Sheriff's Department, is that correct?

10:34:48 9 A. I'd have to look at it.

10:34:50 10 Q. Certainly.

10:34:50 11 MR. MOODY: Objection, Judge. It doesn't --  
10:34:52 12 it doesn't say individual police reports, it refers to  
10:34:54 13 individual police officers.

10:34:56 14 MS. BIANCO: Okay, officers. I'll take that.  
10:34:58 15 I'll reword the question. Individual officers.

10:35:00 16 THE COURT: Okay.

10:35:01 17 Q. I'm going to show you page five and ask you to look  
10:35:05 18 at the bottom half of that document.

10:35:11 19 A. The bottom half?

10:35:13 20 Q. Yes, please.

10:35:32 21 A. I have.

10:35:33 22 Q. On this particular list that you're directing the  
10:35:56 23 attorneys to -- to look at as possible Brady material --

10:36:00 24 A. Ma'am, I'm not directing them to. I'm not directing  
10:36:03 25 them to. I'm merely identifying which -- that which may

10:36:07 1 be.

2 Q. Okay.

10:36:07 3 A. That's all I'm doing. Identifying chronologically  
10:36:11 4 what may be.

10:36:11 5 Q. What may be Brady material.

10:36:13 6 A. May be, yes.

10:36:13 7 Q. Okay, and in that list, you have Oswego County  
10:36:17 8 Sheriff's Department officers William Cromie, yes?

10:36:22 9 A. Ma'am, I'm assuming you're reading from the document  
10:36:24 10 so I don't need -- if you are reading it accurately, then  
10:36:27 11 it reflects what I wrote if you are reading it accurately.

10:36:30 12 Q. Okay, and you list the same officers on Defendant's  
10:36:35 13 Exhibit 13 as you did in your -- your handwriting outlining  
10:36:47 14 what was in the boxes, right?

10:36:49 15 THE COURT: Is that ZZZ?

10:36:53 16 MS. BIANCO: ZZ, yes.

10:36:54 17 THE WITNESS: I'm looking at ZZ.

10:36:56 18 Q. ZZ, right.

10:36:57 19 A. Thank you.

10:37:02 20 Q. And I believe it should be the last page.

10:37:04 21 A. Can I look at the other exhibit can I?

10:37:07 22 Q. Sure.

10:37:19 23 A. Thank you. Looking at thirteen, yes, I've looked at  
10:37:50 24 the two, yes.

10:37:50 25 Q. Okay, and nowhere on your December twenty-first

10:37:55 1 letter do you use the individual names of Deputy M.J.

10:38:03 2 Anderson, Michael Montgomery and Deputy VanPatten?

10:38:08 3 A. They are not typed in there, no, they aren't.

10:38:10 4 Q. Okay.

10:38:26 5 THE COURT: Ms. Bianco, this witness has been  
10:38:28 6 on the stand for about two hours. Do you want to take  
10:38:30 7 a --

10:38:31 8 MS. BIANCO: We need a break, sure.

10:38:33 9 THE COURT: Let's take about ten minutes. Any  
10:38:36 10 objection?

10:38:36 11 MR. OAKES: No.

10:38:36 12 THE COURT: We'll be back at ten of eleven.  
10:38:39 13 (Whereupon, there was a recess.)

10:55:32 14 THE COURT: Do you want to bring Mr. Dodd back  
10:55:35 15 in please.

16 (Whereupon, there was a pause in the  
17 proceeding).

10:55:42 18 THE COURT: Mr. Dodd, consider yourself still  
10:55:43 19 under oath, sir.

10:55:44 20 THE WITNESS: Yes, sir.

10:55:44 21 THE COURT: Thank you. Ms. Bianco.

10:55:47 22 MS. BIANCO: Thank you, Your Honor.

10:55:48 23 BY MS. BIANCO:

10:55:48 24 Q. Mr. Dodd, I want to direct your attention back to  
10:55:51 25 the December eighth, 1994 hearing argument regarding the

10:55:57 1 confidential informant file in particular, okay? During  
10:56:03 2 that argument on a Brady discussion, and if you need to see  
10:56:08 3 the transcript I'll show it to you, Fahey raised a question  
10:56:11 4 about a report that Walsh had been provided regarding the  
10:56:15 5 subject of Heidi Allen being an informant, and if you need  
10:56:19 6 to review the transcript I can show you, it's Exhibit 6 and  
10:56:23 7 it's page thirty.

10:56:26 8 THE COURT: Page thirty?

10:56:28 9 MS. BIANCO: Page thirty, yes, on the bottom  
10:56:35 10 please. You might want to just go on the -- to the  
10:57:02 11 next page because I'll be following the question with  
10:57:04 12 that.

10:57:04 13 THE WITNESS: Thank you.

14 (Whereupon, there was a pause in the  
10:57:13 15 proceeding).

10:57:13 16 A. All right, I've looked at page thirty and  
10:57:17 17 thirty-one.

10:57:17 18 Q. And Mr. Fahey stated that the report that Mr. Walsh  
10:57:24 19 shared with me indicated that there was a file in existence  
10:57:28 20 that was brought to the scene of the D & W but Mr. Walsh  
10:57:31 21 had not been given that particular file. That's what I  
10:57:35 22 asked -- that's what I would ask to be disclosed and you  
10:57:40 23 responded it --

10:57:42 24 A. What page are you at, I'm sorry.

10:57:43 25 Q. Page thirty-two, I apologize. You responded, "It

10:57:53 1 appears oftentimes the first time I hear something is when  
10:57:57 2 I read it in the paper." Do you remember that response?

10:58:02 3 A. Well, the record would speak for itself, miss. I  
10:58:05 4 don't -- do I recall saying those words, no, but the record  
10:58:09 5 speaks for itself.

10:58:09 6 Q. Well, let me ask you this. At that time, which was  
10:58:16 7 the December eighth motion argument, did you not know of  
10:58:24 8 the existence of Heidi Allen as an informant or a possible  
10:58:29 9 informant?

10:58:30 10 MR. MOODY: I'm going to object to the  
10:58:31 11 relevance of what his knowledge was at that point in  
10:58:33 12 time. We're not here to determine what he knew when.  
10:58:35 13 We're here to determine what he turned over.

10:58:38 14 THE COURT: Why's it relevant if he knew it on  
10:58:40 15 December eighth or December thirty-first as long as it  
10:58:43 16 was turned over?

10:58:43 17 MS. BIANCO: Well, Judge, he's saying he's  
10:58:44 18 read every single document in the file from the get go,  
10:58:47 19 and now, at a hearing, in front of another judge, he's  
10:58:52 20 pretending, or excuse me, I apologize for that, he is  
10:58:55 21 contending that it's the first time he's heard about  
10:58:59 22 this by reading it in the newspaper, so what is or  
10:59:02 23 isn't in the file and when it got there is certainly  
10:59:06 24 relevant.

10:59:07 25 THE COURT: Mr. Moody?

10:59:08 1 MR. MOODY: I guess my response to that would  
10:59:12 2 be we're talking about whether he recollected that. He  
10:59:15 3 may have read that particular report and not  
10:59:19 4 recollected it at that time and therefore forgot it and  
10:59:22 5 realized that was the first time. What he knew isn't  
10:59:25 6 the issue. When he knew isn't the issue. I -- I think  
10:59:28 7 that the question is is whether it was turned over.

10:59:34 8 THE COURT: I'll allow that question. That's  
10:59:36 9 it. The issue is was it turned over. It's not when  
10:59:41 10 Mr. Dodd knew about it.

10:59:43 11 MS. BIANCO: Could we repeat the question,  
10:59:44 12 Judge. I don't want to ask it the wrong way.

10:59:46 13 THE COURT: Sure.

10:59:47 14 THE WITNESS: Thank you.

11:00:19 15 (Whereupon, the court reporter read back Ms.  
11:00:20 16 Bianco's last question).

11:00:20 17 MR. MOODY: Is that the question? I thought  
11:00:21 18 the question was whether he -- I think it is -- the  
11:00:24 19 objection -- because my objection was when he -- when  
11:00:26 20 he knew it. I thought she -- she had said the question  
11:00:30 21 was whether he had read that particular report. Maybe  
11:00:33 22 I misunderstood what question.

11:00:34 23 THE COURT: The question was when he knew it.  
11:00:36 24 The question was when he knew it. Did he know it on  
11:00:39 25 December eighth.



11:00:40 1 A. I can testify as best I can to reconstruct this on  
11:00:43 2 December nine, 1994. I reviewed the statements of  
11:00:48 3 investigator -- part of the report, police report  
11:00:50 4 Investigator Anderson, VanPatten, Montgomery, and I  
11:00:57 5 reviewed those documents on December nine, 1994. I can  
11:01:03 6 testify, I can recall that.

11:01:05 7 Q. Okay.

11:01:06 8 A. I --

11:01:07 9 Q. So in -- you -- you can recall reviewing the  
11:01:11 10 documents on December ninth, but did you have any knowledge  
11:01:14 11 on December eighth of the items contained in People's  
11:01:18 12 Exhibit B?

11:01:20 13 A. What's B?

11:01:21 14 Q. I understand there's a lot of files here. That's  
11:01:24 15 the one with the confidential informant card, the picture.

11:01:28 16 THE COURT: Do you have it?

11:01:29 17 MS. BIANCO: I might.

11:01:30 18 THE COURT: It's not up here.

11:01:31 19 THE WITNESS: Okay, I've got B in my hand.

11:01:33 20 THE COURT: Mr. Dodd has it.

11:01:35 21 A. B is a -- well, it's a clear plastic bag with an  
11:01:38 22 evidence sticker. I -- I don't have a clear recollection  
11:01:45 23 that I can testify to from today. I don't. It was part of  
11:01:50 24 oral argument within the context of a motion.

11:01:56 25 Q. So you don't know whether or not that People's

11:02:00 1 Exhibit B was in the file box that -- the file box in  
11:02:05 2 the -- that was in your office, the original file box, do  
11:02:10 3 you know if it was there at that time?

11:02:11 4 A. Things --

11:02:12 5 MR. MOODY: Judge, I think this has been asked  
11:02:14 6 and answered a number of times.

11:02:15 7 THE COURT: I'm not sure. He's talking about  
11:02:17 8 December eighth again?

11:02:18 9 MS. BIANCO: I'm talking about December eighth  
11:02:19 10 when he's saying that he didn't -- the first time he  
11:02:21 11 read about it, he knew about it, his comment that it  
11:02:24 12 was in the newspaper. I'm asking if he knew whether  
11:02:27 13 that document, Exhibit B, was in his file or not.

11:02:29 14 THE COURT: He already answered that. He said  
11:02:31 15 he doesn't have a clear recollection of when he gained  
11:02:34 16 knowledge of it.

11:02:37 17 Q. When was the, and I apologize, you might have  
11:02:47 18 answered this question, but in December of 1994, was the  
11:02:51 19 Sheriff's Department original file already in the District  
11:02:55 20 Attorney's Office, the Grand Jury room, at the time of that  
11:02:59 21 motion argument?

11:03:05 22 A. My best recollection is that it would have been  
11:03:12 23 because we were photocopying the discoverable property, and  
11:03:17 24 my best recollection is that the Sheriff's Department  
11:03:21 25 investigation report filed, whatever else was part of it

11:03:25 1 which could include physical evidence, comes in and goes  
11:03:28 2 out at different stages. I was the prosecutor, they were  
11:03:30 3 the investigators, but I believe it was housed if you will  
11:03:35 4 in the DA's office on that date I believe.

11:03:39 5 Q. Was it moved to the DA's Office because of a breach  
11:03:43 6 that happened at the Sheriff's Department?

11:03:46 7 A. Was what --

11:03:47 8 MR. MOODY: Objection, Judge. I don't -- I  
11:03:50 9 don't think he has testified he knew anything about a  
11:03:52 10 breach.

11:03:52 11 MS. BIANCO: I apologize. I'll ask him.

11:03:53 12 MR. MOODY: And B, I don't know how that is  
11:03:55 13 relevant.

11:03:56 14 THE COURT: First ask him if he knows an  
11:03:58 15 alleged breach.

11:03:59 16 Q. Did you know whether or not --

11:04:01 17 MS. BIANCO: I'm sorry, Judge, I didn't mean  
11:04:02 18 to talk over you.

11:04:03 19 Q. Do you know whether or not there was a breach in  
11:04:05 20 security at the Oswego County Sheriff's Department with  
11:04:09 21 regards to this particular file, the Heidi Allen file, that  
11:04:13 22 they had in possession before it got moved to your office,  
11:04:16 23 do you know whether there was a breach in security?

11:04:18 24 A. Of the Oswego County Sheriff's Department  
11:04:20 25 investigation file?

11:04:21 1 Q. The file, that file, somebody got in the file room.

11:04:24 2 Did you know anything about that?

11:04:25 3 A. I have no idea what you're talking about.

11:04:27 4 Q. Okay, so you weren't familiar with any internal memo  
11:04:31 5 written by Investigator Whipple concerning the breach of  
11:04:34 6 security?

11:04:34 7 A. I have no idea what you're talking about.

11:04:35 8 MR. MOODY: Objection. He said he didn't know  
11:04:40 9 what he's talking about.

11:04:42 10 Q. Okay.

11:04:42 11 A. I can tell you why the file moved if you want to ask  
11:04:44 12 that.

11:04:45 13 Q. No. I want to know if you knew about the breach.

11:04:46 14 A. Thank you.

11:04:47 15 Q. Now, what was the District Attorney's Office, if you  
11:04:57 16 know, what was the fax number. I know you were there for  
11:05:00 17 twenty-six years. What was the fax number at the time?

11:05:04 18 THE COURT: Should ask more specific dates.

11:05:07 19 A. In 2000 -- 1994?

11:05:09 20 Q. Yes.

11:05:11 21 A. It would be on the letterhead, if you have the  
11:05:12 22 letterhead from that date. I want to say it's 349-3477 I  
11:05:17 23 want to say.

11:05:20 24 Q. Would it be 349-3212?

11:05:23 25 A. I stand corrected. That would be from December

11:05:26 1 of --

11:05:27 2 Q. I can show it to you. I'm sorry, I apologize,  
11:05:31 3 that's a December -- that's a 2013 letter.

11:05:34 4 MR. MOODY: If you grab what I think is ten,  
11:05:37 5 eleven or 11-A, I think it should have it right at the  
11:05:43 6 top.

11:05:52 7 Q. Telephone number. 349-3200.

11:05:55 8 A. What's the fax number?

11:05:57 9 Q. Looks like they don't have a fax number on it.

11:06:01 10 A. It's on the top. It has to be.

11:06:02 11 Q. I can show you 11-A, have you take a look at it.

11:06:07 12 A. No, that doesn't refresh my memory. We didn't write  
11:06:14 13 it on 11-A.

11:06:15 14 MR. MOODY: I have something that -- if I can  
11:06:19 15 have one second.

11:06:19 16 THE COURT: Can we stipulate to what the fax  
11:06:21 17 number was?

11:06:22 18 MR. MOODY: Yeah. I can stipulate it's  
11:06:24 19 349-3212.

11:06:26 20 THE COURT: 349-3212 is the fax number.

11:06:29 21 THE WITNESS: Thank you.

11:06:30 22 Q. I'm going to show you Defendant's Exhibit 52 and  
11:06:38 23 52-A. I've made an entire mess.

11:06:46 24 THE COURT: Yes, you have.

11:06:47 25 MS. BIANCO: I apologize.

11:06:53 1 THE COURT: It's all right. Amy can contend  
11:06:56 2 with that. Ms. Bianco, I'm going to hand you 52.  
11:08:54 3 MS. BIANCO: Thank you, Judge. Is that your  
11:09:05 4 copy?  
11:09:08 5 MS. PEEBLES: This is just a copy but we  
11:09:10 6 can --  
11:09:10 7 THE COURT: Re-mark it.  
11:09:11 8 MS. PEEBLES: It's a one-page statement.  
11:09:14 9 THE COURT: Ms. Bianco, hand that to the steno  
11:09:16 10 and have it re-marked as 52-A please.  
11 11 (Defendant's Exhibit No. 52-A was re-marked  
12 for identification).  
11:09:19 13 THE COURT: Any objection to the People?  
11:09:21 14 MR. MOODY: No. Can I just see it, make  
15 sure --  
11:09:39 16 MS. BIANCO: Oh, certainly.  
11:09:39 17 THE COURT: I don't think 52-A was ever moved  
11:09:41 18 in. Our evidence list doesn't show it was ever moved  
11:09:45 19 in.  
11:09:45 20 MR. OAKES: Do you show 52 as having been  
11:09:47 21 received?  
11:09:47 22 THE COURT: 52 was moved in on the fourteenth  
11:09:49 23 of January.  
11:09:52 24 MS. BIANCO: This is 52.  
11:09:54 25 THE COURT: What I'm saying is there's no

11:09:55 1 record with the Court that shows 52-A was ever moved  
11:09:59 2 in.

11:09:59 3 MS. PEEBLES: It was, but it was for the  
11:10:01 4 limited purpose of simply saying it was in the box.

11:10:04 5 MR. MOODY: I thought it was 52.

11:10:06 6 MS. PEEBLES: Both of them, 52 and 52-A, my  
11:10:11 7 recollection was that was what we did, and it was only  
11:10:13 8 offered for the purpose of establishing it was actually  
11:10:16 9 in the box.

11:10:16 10 THE COURT: Let's mark it another 52-A. Any  
11:10:19 11 objection to the 52-A?

11:10:22 12 MR. MOODY: No, Judge.

11:10:23 13 THE COURT: Ms. Bianco, 52-A?

11:10:26 14 MR. MOODY: For the purpose of that it was in  
11:10:29 15 the box.

11:10:30 16 THE COURT: Right. Ms. Bianco, that was just  
11:10:36 17 re-marked. So 52 and 52-A are in at this point prior  
11:11:00 18 to this line of questioning to only establish that  
11:11:02 19 those documents were in Michael Bohrer's file.

11:11:05 20 MS. PEEBLES: Exactly.

11:11:05 21 THE COURT: Not for the content of the actual  
11:11:07 22 letter or the material, correct?

11:11:09 23 MS. PEEBLES: Correct.

11:11:09 24 THE COURT: Okay.

11:11:11 25 MR. MOODY: Correct.

1 (Defendant's Exhibit 52-A was received in  
11:11:15 2 evidence).

11:11:15 3 THE COURT: Go ahead, Ms. Bianco.

11:11:18 4 Q. Showing you what's been marked as 52 and 52-A,  
11:11:24 5 there's a number on the top of those documents, and it also  
11:11:30 6 has Oswego County DWI Unit. Do you see that?

11:11:35 7 A. Just one second, miss.

8 (Whereupon, there was a pause in the  
11:12:02 9 proceeding).

11:12:02 10 A. I looked at 52-A and 52. There -- what is the  
11:12:06 11 question, I'm sorry.

11:12:07 12 Q. That those documents appear to be faxed from a  
11:12:12 13 number that was from -- the fax number from the DA's  
11:12:17 14 office, is that correct?

11:12:18 15 A. I have no idea.

11:12:19 16 Q. Well, the fax number on the top of that, can we  
11:12:24 17 agree that was the DA's Office fax number?

11:12:26 18 A. 349-3202, and I'm drawing from memory here, yes,  
11:12:30 19 that would have been a fax number associated with the  
11:12:32 20 Oswego County District Attorney's office.

11:12:35 21 MR. MOODY: Zero-two or one-two?

11:12:37 22 MS. BIANCO: One-two.

11:12:37 23 THE WITNESS: I said 349-3212.

11:12:39 24 THE COURT: Yes. You just misspoke, that's  
11:12:42 25 all right.



11:12:42 1 Q. That would have been from the District Attorney's  
11:12:44 2 Office, it would appear to be, based on the top where it  
11:12:46 3 would go through the fax machine, correct?

11:12:48 4 A. That would be the fax number that was available to  
11:12:51 5 the District Attorney's Office at that time, yes.

11:12:55 6 Q. Okay, could you explain how those faxed documents --  
11:13:01 7 well, let me ask you this. During the course of discovery,  
11:13:05 8 did you fax documents to the attorneys?

11:13:09 9 MR. MOODY: Objection, Judge, to -- to --  
11:13:11 10 during the course of discovery. I don't think we've  
11:13:13 11 established the date that this was faxed and whether  
11:13:15 12 that was during the course of discovery.

11:13:17 13 Q. What date does that appear to be faxed?

11:13:20 14 A. Well, I'm looking at 52-A, and on the top portion of  
11:13:24 15 it there appears a date May thirty-first, 1994. Doesn't --  
11:13:32 16 and on the other one it appears to also be May  
11:13:33 17 thirty-first, 1994 at 4:20 p.m.

11:13:38 18 Q. Was it part of your procedure or protocol to fax  
11:13:45 19 documents to the attorneys at that time?

11:13:50 20 A. As part of discovery?

11:13:52 21 Q. Yes.

11:13:53 22 A. Okay, best recollection, miss, discovery went over  
11:13:56 23 by way of the documents that were photocopied and submitted  
11:14:02 24 or picked up. My best recollection is that as it relates  
11:14:13 25 to discovery, no. That discoverable property wasn't faxed.

11:14:20 1 That's my best recollection. However, I -- that's my best  
11:14:25 2 recollection.

11:14:26 3 Q. So if those documents were faxed by -- from your  
11:14:31 4 office at the time, it wouldn't have been you who faxed  
11:14:35 5 them?

11:14:35 6 MR. MOODY: Objection, Judge. I don't think  
11:14:36 7 he said that. That wasn't the question that was asked.

11:14:39 8 MS. BIANCO: Well, maybe I'll just be crystal  
11:14:41 9 clear.

11:14:42 10 Q. Can you explain how those documents, 52 and 52-A,  
11:14:46 11 with a fax number from the District Attorney's Office  
11:14:49 12 somehow arrived in a box --

11:14:50 13 MR. MOODY: Objection "somehow arrived."

11:14:52 14 THE COURT: Yeah. Listen, we don't know if  
11:14:53 15 these were faxed to Mr. Bohrer or to -- to allow him  
11:14:57 16 to -- ask him to speculate where they were faxed to, I  
11:15:00 17 don't think it's a fair question.

11:15:02 18 MS. BIANCO: I'll ask him specifically.

11:15:03 19 Q. Did you fax documents to Michael Bohrer, those two  
11:15:08 20 documents, 52 and 52-A?

11:15:10 21 A. No. I will tell you -- I have to explain this.  
11:15:13 22 This -- this shows a fax number. It doesn't indicate that  
11:15:17 23 it was faxed to a particular number. Consistent with  
11:15:21 24 facsimiles as I understand them that would have worked  
11:15:23 25 then, there would be a "faxed from" number and a "faxed to"

11:15:26 1 number. It -- the documents 52-A and 52 do appear to have  
11:15:32 2 the Oswego County DA's fax number. It doesn't indicate to  
11:15:34 3 whom it was faxed. It does not.

11:15:37 4 Q. Okay. Now, directing your attention to the actual  
11:15:46 5 trial of Gary Thibodeau, during the trial itself, did you  
11:15:51 6 have the entire Oswego County Sheriff's Department file  
11:15:58 7 with all the original documents with you during the trial  
11:16:02 8 at the -- in the courtroom?

11:16:04 9 MR. MOODY: I'm going to object to relevance.  
11:16:06 10 I think this is way beyond the scope of redirect.

11:16:09 11 MS. BIANCO: I'm going to get do that, Judge.  
11:16:12 12 I can connect it up.

11:16:13 13 THE COURT: Quickly.

11:16:14 14 A. The entire file, absolutely not. Absolutely not.

11:16:17 15 Q. During your testimony with regards to Exhibit 11,  
11:16:46 16 excuse me, 11-A, do you remember giving testimony that you  
11:17:10 17 had sent a cover letter to Attorney Fahey, and I don't know  
11:17:18 18 if Walsh is on there as well, on May sixteenth that  
11:17:23 19 purported to attach the confidential informant documents  
11:17:28 20 with it?

11:17:29 21 MR. MOODY: I'm going to object. It's beyond  
11:17:30 22 the scope of redirect, Judge. I don't believe I  
11:17:32 23 touched the subject at all.

11:17:33 24 THE COURT: He did not. No 11 or 11-A was  
11:17:36 25 brought back on redirect so I'll sustain it.

11:17:39 1 MS. PEEBLES: Actually I don't think that's  
11:17:41 2 correct. There's an exhibit you introduced, the date  
11:17:46 3 stamp on it, and it might be up on the bench.

11:17:49 4 MS. BIANCO: I think I have it over here.

11:17:51 5 THE COURT: Who introduced? On redirect?

11:17:53 6 MS. PEEBLES: On redirect Mr. Moody introduced  
11:17:55 7 it. It was a yellow sheet of paper with one date stamp  
11:17:59 8 on it and he did on redirect, and correct me if I'm  
11:18:01 9 wrong, but that was when he introduced that document.  
11:18:04 10 We had never seen it before.

11:18:05 11 THE COURT: You mean ZZZ?

11:18:08 12 MS. BIANCO: No, it's another document. I  
11:18:09 13 think it's up there.

11:18:10 14 THE COURT: That document?

11:18:11 15 MS. PEEBLES: No.

11:18:12 16 MS. BIANCO: Not that one. There was another  
11:18:13 17 document.

11:18:14 18 MS. PEEBLES: It was a yellow sheet by itself.  
11:18:20 19 Oh, here it is. This would be KKK.

11:18:22 20 THE COURT: Tie to KKK. Show Mr. Moody KKK.

11:18:30 21 MR. MOODY: This isn't part of KKK, this is  
11:18:34 22 part of B. This is the report for B.

11:18:35 23 MS. PEEBLES: That's what was introduced.

11:18:37 24 MR. MOODY: It was in B when I introduced it  
11:18:40 25 in B. This is --

11:18:40 1 MS. PEEBLES: Whatever number it is.

11:18:42 2 MR. MOODY: This is the original Kleist report  
11:18:44 3 that was attached to the evidence bag on B. It fell  
11:18:47 4 off at some point in the last month. That's B there.  
11:18:49 5 That was with B. I introduced -- excuse me. You said  
11:18:53 6 that I introduced this during the -- I never introduced  
11:18:55 7 this during this -- during redirect or -- or with this  
11:18:59 8 witness. I introduced this. I believe this was  
11:19:04 9 introduced on -- in their case when they introduced it,  
11:19:08 10 it was introduced through Fahey.

11:19:10 11 MS. PEEBLES: We never saw that document until  
11:19:12 12 yesterday on redirect.

11:19:14 13 MR. MOODY: That's absolutely not true.

11:19:17 14 MS. PEEBLES: That's absolutely the case.  
11:19:17 15 I've never seen that.

11:19:17 16 THE COURT: Hold on. KKK is a memo from Mr.  
11:19:20 17 Dodd received March twenty-fourth.

11:19:25 18 MS. PEEBLES: Thank you. That --

11:19:26 19 MR. MOODY: This is not KKK, that's what I'm  
11:19:28 20 saying. This -- if someone would bring -- this is the  
11:19:33 21 original carbon copy of the Kleist report that goes  
11:19:36 22 with 11 and 11-A.

11:19:38 23 MS. PEEBLES: We need to ask questions. We  
11:19:39 24 never saw that document until Wednesday.

11:19:41 25 MR. MOODY: It was attached to B.

11:19:43 1

THE WITNESS: Judge, could I --

11:19:44 2

THE COURT: No. Hold on a second.

11:19:45 3

THE WITNESS: I'm sorry. I had it in my hand.

11:19:47 4

I just --

11:19:50 5

THE COURT: If this was attached to B.

11:19:52 6

MR. MOODY: It fell off.

11:19:53 7

MS. PEEBLES: It might have fallen off. I've

11:19:55 8

never seen it before, Judge, before he was questioning

11:19:57 9

Mr. Dodd about it.

11:19:57 10

THE COURT: The staple has been removed. If

11:20:00 11

you never saw it, it was attached to B.

11:20:02 12

MS. PEEBLES: Never saw it. Never saw it.

11:20:03 13

MR. MOODY: You have seen it.

11:20:04 14

MS. PEEBLES: No because I just found

11:20:05 15

something on it yesterday. I never saw this document

11:20:07 16

before.

11:20:07 17

THE COURT: But it was attached to B. We

11:20:09 18

already moved B in so you had access to it.

11:20:11 19

MS. PEEBLES: This was not part of B. We

11:20:12 20

never saw it.

11:20:13 21

MR. MOODY: It was absolutely part of B.

11:20:15 22

MS. PEEBLES: Judge, what is the problem with

11:20:17 23

allowing her to make -- ask this witness questions

11:20:19 24

about this document? Is there a problem with that?

11:20:23 25

Why are you objecting?

11:20:24 1 MR. OAKES: Well, it's --

11:20:25 2 THE COURT: Because it's beyond the scope.

11:20:27 3 MR. OAKES: It's beyond the scope of redirect.

11:20:29 4 Mr. Dodd has been on the stand probably eight hours if  
11:20:34 5 not plus at this point. We have rehashed issues three  
11:20:36 6 or four times, and I have a clear recollection that  
11:20:38 7 this was part of B, part of, it's been stapled to that,  
11:20:43 8 they came detached to it. Again, this was introduced  
11:20:46 9 early on, this was not part of redirect.

11:20:49 10 MS. PEEBLES: So it will be a problem for her  
11:20:50 11 to ask him a couple questions regarding this document  
11:20:53 12 for a reason? What reason?

11:20:55 13 MR. OAKES: Well, because the point that this  
11:20:57 14 witness has been on the stand for eight hours, Ms.  
11:21:00 15 Bianco has had plenty of opportunity to ask some  
11:21:04 16 questions about this and -- ask some questions about  
11:21:05 17 this issue, and we'd like to be able to move on with  
11:21:09 18 this examination of this witness and other witnesses in  
11:21:11 19 a timely fashion.

11:21:12 20 THE COURT: How many questions are you going  
11:21:13 21 to ask?

11:21:14 22 MS. PEEBLES: Just a couple questions.

11:21:16 23 MR. MOODY: About what because this document  
11:21:18 24 is --

11:21:19 25 THE COURT: Guys, we're -- we're pulling

11:21:20 1 documents around. I'm not going to be very happy if  
11:21:24 2 you rip it.

11:21:24 3 MS. BIANCO: Can I state on the record my  
11:21:25 4 offer of proof as to why we offer this document? There  
11:21:28 5 are two -- there's a document here that purports to be  
11:21:31 6 the same thing, and Mr. Dodd testified to this during  
11:21:35 7 his redirect examination that this document was the  
11:21:40 8 same as the document contained in whether it be eleven  
11:21:43 9 or eleven --

11:21:44 10 THE COURT: 11-A.

11:21:45 11 MS. BIANCO: 11-A.

11:21:46 12 THE COURT: Before you go any further, do we  
11:21:48 13 have an agreement that was attached to Exhibit B?

11:21:50 14 MS. PEEBLES: I've never seen the document. I  
11:21:52 15 can't say so --

11:21:54 16 THE COURT: KKK is a memo. KKK is not a piece  
11:21:59 17 of paper.

11:22:00 18 MS. PEEBLES: I never saw that document before  
11:22:01 19 Wednesday.

11:22:02 20 THE COURT: Was it --

11:22:03 21 THE WITNESS: Judge, I have to correct  
11:22:05 22 something. I -- it's not my place, it was witness  
11:22:07 23 intervention. It was in the bag that was handed to me.  
11:22:11 24 I took the yellow piece of paper out of the bag when I  
11:22:14 25 was inspecting it. I just have to be correct on the



11:22:16 1 record.

11:22:17 2 MS. BIANCO: But he testified he looked at  
11:22:18 3 this, and this was on redirect examination, he looked  
11:22:21 4 at this document, he compared it with the document  
11:22:25 5 contained in Defendant's Exhibit 11 and he stated that  
11:22:30 6 it was the same thing.

11:22:31 7 THE COURT: That's going to be part of B.  
11:22:34 8 That's what's in your right hand goes to B. Give it to  
11:22:38 9 B, put it back in B.

11:22:40 10 MS. PEEBLES: Which is perfectly fine.

11:22:43 11 THE COURT: I understand that. Put it back in  
11:22:46 12 B. Do you believe it was stapled? It probably --

11:22:48 13 MR. MOODY: I believe it was stapled to the  
11:22:49 14 outside of B.

11:22:51 15 MR. OAKES: It was originally. I think it was  
11:22:52 16 actually --

11:22:52 17 THE COURT: Do you have any objection to  
11:22:53 18 putting it inside of B?

11:22:55 19 MS. PEEBLES: No objection.

11:22:55 20 THE COURT: That way we won't lose it.

11:22:57 21 MR. OAKES: And Your Honor, doesn't it perhaps  
11:22:59 22 make sense to have a sticker put on that it's part of  
11:23:02 23 B, B-1 or --

11:23:03 24 THE COURT: That's fine, some part of B. Do  
11:23:05 25 you want to put B on there?

11:23:06 1 MS. BIANCO: Before it goes back in the bag I  
11:23:12 2 actually want to use it, so you can put it in the bag,  
11:23:15 3 but I'm going to take it out.

11:23:17 4 MR. OAKES: Can I just have it marked and then  
11:23:18 5 I'll give it to Ms. Bianco please.

11:23:20 6 THE COURT: That's fine. I'll allow the line  
11:23:26 7 of questioning. There seems to be some confusion when  
11:23:30 8 it came out of the bag. I don't know what harm comes  
11:23:32 9 from the questions.

11:23:33 10 MR. OAKES: Thank you, Your Honor.

11:23:35 11 THE COURT: So the People and defense agree  
11:23:37 12 that yellow piece of paper that Ms. Bianco you now have  
11:23:43 13 will be considered and will be part of B. Ms. Peebles?

11:23:47 14 MS. PEEBLES: No problem.

11:23:47 15 THE COURT: Ms. Bianco?

11:23:48 16 MS. BIANCO: No problem, Judge.

11:23:50 17 THE COURT: The People.

11:23:51 18 MR. OAKES: The People agree. Thank you, Your  
11:23:52 19 Honor.

11:24:27 20 (People's Exhibit B (yellow sheet) was marked  
11:24:30 21 for identification).

11:24:37 22 THE COURT: Before we go any further, do you  
11:24:39 23 have -- what exhibits do we have over here?

11:24:40 24 THE WITNESS: I have 11-A which is not stapled  
11:24:43 25 together. I have ZZZ.

11:24:45 1 THE COURT: Ms. Bianco, do you want to take  
11:24:47 2 some of these exhibits back?

11:24:49 3 MS. BIANCO: I need 11-A but the rest can go  
11:24:52 4 back.

11:24:52 5 THE WITNESS: I'm going to hand you back ZZZ.

11:24:54 6 MR. MOODY: Judge, and looking at -- at my  
11:24:57 7 notes --

11:24:57 8 THE COURT: Don't take B away, that thing's  
11:24:59 9 part of B.

11:25:01 10 MS. BIANCO: I got B right here with B, right  
11:25:03 11 here, this was going to you.

11:25:04 12 THE COURT: That's fine. Bring it over right  
11:25:06 13 here.

11:25:07 14 MS. BIANCO: And there's 52 and 52-A are  
11:25:10 15 coming over as well.

11:25:11 16 THE WITNESS: Do you wish me, Judge, also to  
11:25:12 17 return the additional exhibits?

11:25:14 18 THE COURT: I prefer you to, yes.

11:25:15 19 THE WITNESS: Thank you.

11:25:16 20 THE COURT: Give to Ms. Bianco

11:25:18 21 THE WITNESS: Ms. Bianco, if I may, I'm going  
11:25:20 22 to hand you back 164, Defendant's YYY, People's Exhibit  
11:25:24 23 6, defendant.

11:25:26 24 MS. BIANCO: Thank you.

11:25:26 25 THE WITNESS: I only have before me 11-A. If

11:25:29 1 you want me to have that one.

11:25:30 2 THE COURT: Just give him that part of B.

11:25:51 3 MR. MOODY: And Judge, in reviewing my notes,  
11:25:53 4 apparently on my redirect on Wednesday part of it I did  
11:25:55 5 ask him about the bag.

11:25:58 6 THE COURT: I'm going to allow it any ways.

11:26:00 7 MR. MOODY: I apparently did ask him about the  
11:26:02 8 bag, I apologize.

11:26:07 9 THE COURT: Go ahead, Ms. Bianco.

11:26:09 10 MS. BIANCO: Thank you, Judge.

11:26:57 11 THE COURT: Are you ready, Ms. Bianco?

11:26:58 12 MS. BIANCO: Yes, Judge. I'm just making sure  
11:27:00 13 I have all the documents that I need.

14 BY MS. BIANCO:

11:27:03 15 Q. When you testified as to Exhibit B, People's Exhibit  
11:27:13 16 B, the Kleist report, do you remember giving testimony that  
11:27:18 17 that was an exact copy of the report that was contained in  
11:27:30 18 Exhibit 11?

11:27:34 19 A. Could I see 11 please?

11:27:36 20 Q. Certainly.

11:27:41 21 A. Thank you. Didn't testify it was an exact copy. I  
11:27:47 22 testified that in part it was an exact reproduction, but  
11:27:51 23 that there were additional items that appeared on Exhibit  
11:27:58 24 11, specifically a date stamp of May sixteen, 1995,  
11:28:03 25 District Attorney's Office, and also there was writing that

11:28:08 1 said re: OCSD evidence, R. Thibodeau, G. Thibodeau,  
11:28:14 2 Investigator Kleist.

11:28:14 3 Q. And you remember giving testimony that you had  
11:28:17 4 received the Kleist report first and sent it to the defense  
11:28:24 5 before you brought it over to the Sheriff's Department to  
11:28:26 6 be stamped in. Am I correct in that?

11:28:29 7 A. I'm trying to understand your question accurately.  
11:28:32 8 I believe you're referencing that after the District  
11:28:36 9 Attorney's Office received on May sixteen, 1995 and date  
11:28:40 10 stamped it as received, Investigator Kleist report, that  
11:28:46 11 best recollection subject to what the record says is that  
11:28:48 12 the next day, May seventeenth, whatever the exhibit number  
11:28:51 13 is, that I provided copies of that to attorneys Fahey and  
11:28:54 14 Walsh, yes.

11:28:55 15 Q. And then you brought it over to the Sheriff's  
11:28:58 16 Department, correct?

11:28:58 17 A. It being that which we had, the District Attorney's  
11:29:02 18 Office had received, didn't bring it over, it would have  
11:29:04 19 been in the same -- literally I put it into the inbox for  
11:29:07 20 the purposes of it being received through Investigator  
11:29:12 21 Whipple, yes.

11:29:12 22 Q. Okay, if -- I want you to take -- to compare the  
11:29:16 23 date stamp for the Sheriff's Department on both of those  
11:29:21 24 documents. Could you take a look at Exhibit B --

11:29:24 25 THE COURT: Do you mean that portion B?

1 MS. BIANCO: That portion B.

11:29:26 2 THE COURT: B and 11.

11:29:28 3 Q. B and 11, right, there's a stamp on the bottom that  
11:29:32 4 says Oswego County Sheriff's Department.

11:29:35 5 A. Yes.

11:29:36 6 Q. Okay, they're not in the same places are they,  
11:29:39 7 they're in different locations on that document aren't  
11:29:42 8 they?

11:29:42 9 A. Do you want the explanation?

11:29:44 10 Q. I'm asking you if they're in different locations.

11:29:46 11 A. They're in -- no, they're not in different  
11:29:49 12 locations, but you're correct, the -- on the yellow piece  
11:29:53 13 of paper which is B, the date stamp which is Oswego County  
11:29:57 14 Sheriff's Department received May twenty-third, 1995 is  
11:30:01 15 towards the bottom aspect of the yellow piece of paper, and  
11:30:04 16 on Exhibit No. 11, that same document, there's a received  
11:30:10 17 date of May twenty-third, 1995, again, in the general same  
11:30:14 18 area, but you're correct, they're not in the identical  
11:30:16 19 location, that's correct.

11:30:18 20 Q. Okay, so they're stamping documents multiple times  
11:30:24 21 in different spots and that's part of the original file?

11:30:28 22 A. To completely answer the question, the yellow piece  
11:30:34 23 of paper would have been part of an evidence submission so  
11:30:37 24 that when it was submitted as evidence with the Sheriff's  
11:30:41 25 Department, it received a date stamp. That's Exhibit B.

11:30:45 1 Exhibit No. 12, or correction, eleven.

11:30:49 2 THE COURT: Eleven.

11:30:49 3 A. Would have been the document that was sent to the  
11:30:52 4 Oswego County Sheriff's Department from the District  
11:30:56 5 Attorney's Office. It also received a date stamp. They  
11:31:00 6 were submitted to Investigator Whipple apparently on the  
11:31:04 7 same date, one by Investigator Kleist and one would have  
11:31:09 8 been through the District Attorney's Office.

11:31:11 9 Q. So when he put that evidence, that -- that yellow  
11:31:15 10 sheet is an evidence tag of some sort?

11:31:17 11 A. No, it's not an evidence tag, it's a supplemental  
11:31:20 12 report that the officer who was putting evidence into a bag  
11:31:26 13 would have either stapled it to the outside of the bag or  
11:31:28 14 put inside of the bag as part of the evidence submission,  
11:31:31 15 and a copy of it was apparently then given to investigator,  
11:31:35 16 or correction, to Investigator Whipple by Investigator  
11:31:38 17 Kleist, yes.

11:31:39 18 Q. I want you to look at the evidence login sheet on  
11:31:44 19 Defendant's Exhibit 11 please, the very bottom notation  
11:31:50 20 where Investigator Whipple is logging the evidence in. Do  
11:31:54 21 you see that?

11:31:55 22 A. You're talking about Exhibit 11? I'm sorry.

11:31:59 23 Q. That's okay. I'm probably confusing you.

11:32:04 24 A. Okay, page one of Exhibit No. 11.

11:32:07 25 Q. Yes. Do you see that?

11:32:10 1 A. One second.

11:32:13 2 (Whereupon, there was a pause in the  
11:32:15 3 proceeding.)

11:32:15 4 A. Yes.

11:32:16 5 Q. Okay, and the date is May twenty-third, correct?

11:32:19 6 A. 1995 by Investigator Whipple, yes.

11:32:23 7 Q. And it was put back on an evidence shelf, isn't that  
11:32:26 8 what it says?

11:32:28 9 A. The item that was submitted, the plastic bag that  
11:32:32 10 you hold in your hand, if it's the same number, that  
11:32:35 11 particular plastic bag then would have been taken by Terry  
11:32:39 12 Whipple who was also the evidence custodian, he would have  
11:32:42 13 been the person who put it into secure evidence. This  
11:32:45 14 document Exhibit No. 11 merely reflects what it is that he  
11:32:48 15 did with the physical evidence item that you hold in your  
11:32:52 16 hand.

11:32:52 17 Q. So would you agree that the physical evidence of the  
11:32:58 18 evidence contained in People's Exhibit B was logged in on  
11:33:04 19 an evidence shelf on May twenty-third, 1995?

11:33:08 20 A. I can tell you that the page one of Exhibit No. 11  
11:33:17 21 reflects what it is that Terry Whipple typed, ma'am. I can  
11:33:21 22 testify as to what. I can read the document but it's what  
11:33:24 23 he typed.

11:33:25 24 Q. Okay, and --

11:33:26 25 A. I didn't -- I didn't do this. This is what



11:33:28 1 Investigator Whipple did, ma'am.

11:33:30 2 Q. And Gary Thibodeau's trial started on May  
11:33:33 3 twenty-second?

11:33:33 4 A. Best recollection is jury selection started about  
11:33:36 5 May twenty-second, 1995, best recollection.

11:33:39 6 Q. And this particular piece of People's Exhibit B was  
11:33:44 7 not with you during the course of the trial, it was not in  
11:33:48 8 your evidence box.

11:33:50 9 THE COURT: Hold it before you use that. Are  
11:33:51 10 you talking about the entire B or yellow B?

11:33:54 11 Q. The entire B.

11:33:59 12 A. I know that for the purposes of the jury trial  
11:34:03 13 involving Gary Thibodeau, that there were items of physical  
11:34:06 14 evidence that I would have requested to be taken out of  
11:34:09 15 secure evidence from the Sheriff's Department through  
11:34:11 16 Investigator Whipple to be given to me for the purposes of  
11:34:15 17 having it with me to introduce. I -- I do not have a clear  
11:34:21 18 recollection, although I didn't introduce that so I can say  
11:34:25 19 that no, it in all probability, ninety-nine point nine nine  
11:34:29 20 nine percent, it would not have been in my physical  
11:34:32 21 possession during the course of the jury trial because it  
11:34:36 22 was not an item that I would seek to introduce into  
11:34:39 23 evidence.

11:34:40 24 Q. And you would agree that if it was taken out of the  
11:34:44 25 evidence shelf, it would have been -- there would have been

11:34:47 1 a log note that said it was taken out and then put back,  
11:34:50 2 right?

11:34:51 3 THE COURT: Hold it. Where are you going with  
11:34:52 4 this? He said he sent it over on the seventeenth of  
11:34:55 5 May.

11:34:55 6 MS. BIANCO: Well, Judge --

11:34:56 7 THE COURT: Why would you expect -- why would  
11:34:58 8 he have to introduce this? I'm trying to figure out  
11:35:00 9 where we're going.

11:35:02 10 MS. BIANCO: Judge, he -- he said he sent it  
11:35:03 11 over on the seventeenth.

11:35:05 12 THE COURT: Right.

11:35:06 13 MS. BIANCO: Of May. He said he sent it over  
11:35:09 14 on June the fifth as well, that's this yellow document  
11:35:12 15 SS.

11:35:13 16 THE COURT: Okay.

11:35:14 17 MS. BIANCO: That's in the pile of the SS  
11:35:17 18 things, and I believe if you look at the testimony,  
11:35:20 19 particularly it was my testimony, during the course of  
11:35:25 20 my review of Attorney Walsh's file, the only piece of  
11:35:30 21 evidence that he had regarding this was stamped with  
11:35:34 22 the May twenty -- with the Sheriff's Department stamp  
11:35:37 23 and the district attorney's May sixteenth stamp so it  
11:35:40 24 couldn't have been given on the sixteenth because he  
11:35:43 25 has a different document, he has a document that's

11:35:46 1 dated with the twenty-third on it and that was  
11:35:48 2 introduced. In other words, it wasn't sent down on the  
11:35:51 3 sixteenth, it couldn't have been because --

11:35:53 4 THE COURT: He said the seventeenth first of  
11:35:55 5 all.

6 MS. BIANCO: The seventeenth because how could  
7 there be the stamp.

11:35:55 8 THE COURT: You said Mr. Walsh's file. You  
11:35:58 9 mean Mr. Fahey's file.

11:36:00 10 MS. BIANCO: No, Mr. Walsh's file. That's how  
11:36:02 11 we discovered this document which Fahey never had.

11:36:04 12 THE COURT: That's your position he's never  
11:36:06 13 had.

11:36:06 14 MS. BIANCO: Right, and the testimony was --

11:36:07 15 THE COURT: Mr. Moody, do you wish to be  
11:36:09 16 heard?

11:36:09 17 MR. MOODY: Judge, I think the problem we're  
11:36:11 18 getting into is that it -- what they're talking about  
11:36:15 19 two different documents as being the same. It appears  
11:36:17 20 that -- that according to what I understand DA Dodd's  
11:36:22 21 testimony to be, on the seventeenth he received a  
11:36:25 22 document. He made copies of what was there. And  
11:36:28 23 stamped it. He then returned the original to the  
11:36:32 24 original documents that he had to Investigator Kleist  
11:36:34 25 or whoever brought them up and then they were then

1 brought to the Sheriff's Department so they would be  
2 two separate documents, the one stamped the sixteenth  
3 and then went on -- and then the one logged in the  
4 twenty-third which the copy there that is -- that is  
5 with -- and he apparently what he said is they gave  
6 that copy or made a copy that was stamped and gave that  
7 copy to Kleist as well and that was logged in or put in  
8 the file as well. I think what we have are there's --  
9 and there are clearly two separate documents. We have  
10 two separate documents with two different dates on  
11 them.

12 MS. PEEBLES: Judge, can I be heard on this  
13 just to clear some stuff up because I think there is  
14 some confusion with the Court and I want to make sure  
15 you understand where we're going with this.

16 THE COURT: Yeah. I'd like to know where  
17 you're going with this.

18 MS. PEEBLES: Yeah, okay. First and foremost  
19 as Ms. Bianco stated, the reason we discovered this is  
20 because we went through Attorney Walsh's file and we  
21 saw the Kleist document and it had -- the only Kleist  
22 document we had was the May twenty-second, May  
23 sixteenth date stamp and the May twenty-third date  
24 stamp so obviously Mr. Walsh had to get that document  
25 sometime after May twenty-third, okay, so hear me out.

11:37:45 1 The bottom --

11:37:45 2 THE COURT: Why's it the logical conclusion?

11:37:48 3 MS. PEEBLES: How could he get a document  
11:37:50 4 before May twenty-third?

11:37:51 5 THE COURT: He could have sent them twice.

11:37:52 6 MS. BIANCO: It was the stamp, the stamp on it  
11:37:54 7 says May twenty-third.

11:37:55 8 MS. PEEBLES: The stamp says May twenty-third.  
11:37:57 9 The Sheriff's Department stamp, you have the documents,  
11:38:00 10 there's two stamps, May sixteenth, May twenty-third.

11 11 THE COURT: Okay.

11:38:02 12 MS. PEEBLES: He has to have received it after  
11:38:03 13 May twenty-third, no question about it, so in an effort  
11:38:06 14 to establish how Mr. Walsh would have possibly gotten a  
11:38:08 15 document that's date stamped May twenty-third on May  
11:38:12 16 seventeenth, they're trying to argue oh, by the way, we  
11:38:14 17 plopped it on his desk on June fifth after they rested.  
11:38:17 18 That's how he got the document that's date stamped May  
11:38:20 19 twenty-third.

11:38:20 20 THE COURT: There's no jury. We don't need to  
11:38:23 21 be all -- what's your argument?

11:38:24 22 MR. MOODY: My argument is that he received  
11:38:27 23 what I believe --

11:38:27 24 THE COURT: He being who, Walsh?

11:38:31 25 MR. MOODY: Fahey or Walsh, that on May

11:38:34 1           seventeenth the -- and I believe it's 11 or 11-A.

11:38:36 2           THE COURT: 11.

11:38:36 3           MR. MOODY: The letter that was sent that  
11:38:38 4           those documents, the Kleist report that has the date  
11:38:42 5           stamped just on the DA's Office on the sixteenth.

11:38:45 6           THE COURT: Right.

11:38:45 7           MR. MOODY: And the attached documents with  
11:38:47 8           that, were sent on May seventeenth. They then were  
11:38:50 9           re-sent because the Sheriff's Department received the  
11:38:54 10          Kleist report which according to the copies that you  
11:38:57 11          can read was written on May sixteenth, and they  
11:39:03 12          received that report that -- that then they re-sent  
11:39:08 13          that document after they stamped it in and after Terry  
11:39:12 14          Whipple writes his -- the notes that he wrote on it  
11:39:14 15          back to the DA's Office and that -- and they also made  
11:39:16 16          a photocopy of the evidence tag that was on that, and  
11:39:21 17          that was re-sent out on June fifth, so in other words,  
11:39:27 18          they're two separate documents, and that's why they're  
11:39:29 19          in two separate date stamps. I think --

11:39:32 20          MS. PEEBLES: I guess it's going to be a  
11:39:34 21          matter of the Court to sort through, but it makes  
11:39:37 22          absolutely ridiculous sense what he just said about how  
11:39:40 23          they came into possession of those documents. It makes  
11:39:42 24          no sense.

11:39:43 25          THE COURT: Ms. Bianco.

11:39:46 1 MS. BIANCO: Yes, Judge.

11:39:47 2 THE COURT: Continue the line of questioning  
11:39:49 3 but you seem to be -- get to the point please of where  
11:39:52 4 you're going with this.

11:39:57 5 MS. BIANCO: Judge, I think I'm going to move  
11:39:59 6 on to another topic.

11:40:00 7 THE COURT: Okay.

11:40:05 8 Q. I guess my only -- I want to make sure I clarify  
11:40:10 9 that Exhibit B, the actual physical exhibit, was not in  
11:40:16 10 your possession during the course of Gary Thibodeau's trial  
11:40:20 11 in the courtroom, that's I guess what I'm trying to --

11:40:23 12 A. Ms. Bianco, my -- my best recollection is that it  
11:40:32 13 probably was not.

11:40:34 14 Q. Because you had no intention of introducing that  
11:40:37 15 document, would that be fair?

11:40:38 16 MR. MOODY: That's been asked and answered a  
11:40:40 17 couple times.

11:40:42 18 THE COURT: Sustained.

11:40:42 19 A. Best recollection, yes.

11:40:42 20 THE COURT: That's all right. It's sustained.

11:40:44 21 Q. Oh, I do have an additional question. Were you  
11:40:53 22 aware of a lead that came in immediately after Gary  
11:41:01 23 Thibodeau's trial and prior to Richard Thibodeau's trial  
11:41:06 24 concerning a writing on --

11:41:09 25 THE COURT: I'm sorry, I didn't hear you.

11:41:11 1 Q. Concerning a -- were you aware of a lead that came  
11:41:14 2 in, and I think it's Exhibit 140.

11:42:06 3 THE COURT: Do you have another 140?

11:42:08 4 MS. PEEBLES: Yes.

11:42:09 5 MR. MOODY: Judge, if what we are talking  
11:42:11 6 about is lead of the Junius Pond, I believe that's on  
11:42:16 7 Junius Pond bathroom, this is well beyond the scope of  
11:42:20 8 anything in redirect.

11:42:21 9 THE COURT: Sustained.

11:42:21 10 MS. PEEBLES: Actually it's not. There is a  
11:42:23 11 reference to Junius Pond on the --

11:42:25 12 THE COURT: Direct.

11:42:26 13 MS. PEEBLES: The notepad that was introduced  
11:42:28 14 into evidence by the prosecution.

11:42:29 15 THE COURT: What note pad, ZZZ?

11:42:31 16 MS. PEEBLES: I think it was ZZZ.

11:42:34 17 THE COURT: Okay.

11:42:36 18 MR. MOODY: But no questions were asked about  
11:42:38 19 that lead. I'm not sure --

11:42:39 20 THE COURT: You're not saying you opened the  
11:42:42 21 door when you introduced the bag? I'll allow the  
11:42:45 22 question.

11:42:45 23 Q. And your Exhibit ZZZ had some reference to --

11:42:49 24 A. Ma'am, I'm having trouble hearing, I'm sorry.

11:42:51 25 Q. I'm sorry, I'm losing my voice at this point. I can



11:42:54 1 put the mike on.

11:42:54 2 THE COURT: Yeah.

11:43:55 3 Q. Showing you ZZZ.

11:43:59 4 A. And while you're here, ma'am, I'm going to return to  
11:44:02 5 you B and 11.

11:44:03 6 Q. Thank you.

11:44:05 7 A. I'm taking ZZZ.

11:44:08 8 MS. BIANCO: And I'm going to put B back.

11:44:11 9 THE COURT: Please do.

11:44:30 10 Q. Do you see where it says the Junius Pond?

11:44:33 11 A. I had written down NYST Junius Pond which is a  
11:44:40 12 substation but was -- reflects there was a file that had  
11:44:44 13 that on it, NYSP Junius Pond.

11:44:48 14 Q. Was that referencing a lead that came in that  
11:44:54 15 stated --

11:44:56 16 MR. MOODY: Judge, I'm going to object because  
11:44:57 17 if now -- unless we're going to contend that the Junius  
11:45:00 18 Pond New York State Police Station is in the bathroom  
11:45:04 19 of the Junius Pond travel stop --

11:45:06 20 THE COURT: Well, I think the question --.

11:45:08 21 MR. MOODY: I don't think I opened the door.

11:45:10 22 THE COURT: I think the question is maybe have  
11:45:11 23 him explain what he means because if it's just  
11:45:13 24 reference to the substation, it's not -- you cannot  
11:45:16 25 bring in the other evidence.

11:45:17 1 MS. BIANCO: This references the substation as  
11:45:19 2 well. This is one of the documents --

11:45:21 3 THE COURT: Okay.

11:45:21 4 MS. BIANCO: -- that he's referencing.

11:45:22 5 THE COURT: If you can tie it in, tie it in.  
11:45:25 6 Tie it in, see if you can tie it in.

11:45:27 7 Q. Okay, do you recall a lead coming in to the State  
11:45:33 8 Police that someone had written on the bathroom stall wall  
11:45:36 9 at the thruway stop of Junius Pond "Heidi Allen is a  
11:45:40 10 snitch." Do you remember that lead?

11:45:41 11 A. No, ma'am. I'm going to have to look at what you  
11:45:43 12 have.

11:45:44 13 Q. Certainly.

11:45:44 14 A. You're asking me to remember a -- what lead number  
11:45:48 15 was it please?

11:45:48 16 Q. One-forty.

11:45:49 17 A. Out of fifteen-hundred. You're asking me to  
11:45:51 18 remember that one.

11:45:52 19 THE COURT: The question I have for you, Ms.  
11:45:53 20 Bianco, is his ZZZ notation simply makes reference to  
11:45:58 21 the Junius Pond substation, not making reference to a  
11:46:01 22 June fifth report.

11:46:02 23 MS. BIANCO: Well, the question is that  
11:46:03 24 document I think he's already testified was a  
11:46:06 25 continuing work in progress. That Junius substation

11:46:09 1 thing is referencing that particular document. That's  
11:46:13 2 our contention where they're talking about the snitch  
11:46:16 3 part.

11:46:17 4 THE WITNESS: Do you want me to answer the  
11:46:18 5 question?

11:46:18 6 THE COURT: Let her ask the question first.  
11:46:21 7 Ask that question.

11:46:22 8 Q. Do you remember that lead coming in?

11:46:25 9 A. Lead --

11:46:27 10 Q. One-forty.

11:46:28 11 A. Well, it's marked as an exhibit, it's marked as an  
11:46:31 12 Exhibit 140.

11:46:32 13 Q. Excuse me. 140, there is no lead number on it. I  
11:46:34 14 don't believe there is.

11:46:35 15 A. Well there's a lead that says four-one-six.

11:46:38 16 Q. Okay.

11:46:38 17 A. Bear with me. I'm looking at it. It appears to  
11:46:46 18 have a lead number of four-one-six from a Tim J. Lawton.

11:46:52 19 Q. Do you remember receiving or looking, reviewing that  
11:46:55 20 lead at any time, do you remember that?

11:46:58 21 A. If this was received and is one of the leads or was  
11:47:02 22 a document, at some point I would have looked at it, yes,  
11:47:05 23 ma'am. Do I have a clear recollection today as I testify  
11:47:08 24 that I looked at this? I would have looked at it but I  
11:47:20 25 don't have a clear recollection as I testify today.

11:47:23 1 MR. MOODY: It appears that the copy of that  
11:47:25 2 lead has the number cut off either because the way it  
11:47:28 3 was photocopied or whatever because -- and I've seen  
11:47:31 4 the original. The actual lead number is one-four-one-  
11:47:35 5 six. And I'll show you.

11:47:38 6 THE COURT: It makes sense if it's a June  
11:47:41 7 lead.

11:47:42 8 MS. BIANCO: That's fine, that's what they  
11:47:43 9 provided us so that's what we have.

11:47:45 10 THE COURT: Okay.

11:47:45 11 MR. MOODY: Just show you this, the page from  
11:47:50 12 that.

11:47:53 13 Q. Do you know if that was ever provided to attorney --  
11:47:56 14 do you know if that was ever provided to Attorney Fahey,  
11:47:58 15 that particular lead about Heidi Allen being a snitch  
11:48:02 16 written on the bathroom wall?

11:48:03 17 A. Lead one-four-one-six?

11:48:05 18 Q. Yes.

11:48:06 19 A. Hold on. In looking at ZZZ --

11:48:22 20 MR. MOODY: Judge, can -- can -- how is that  
11:48:25 21 relevant? I'm still getting confused. How is it  
11:48:28 22 relevant and how is it not beyond the scope of the  
11:48:31 23 direct?

11:48:31 24 THE COURT: Well, when -- when did the witness  
11:48:34 25 make the notation in ZZZ about the Junius Pond State

11:48:38 1 Troopers barracks? Can you tell us?

11:48:40 2 THE WITNESS: Yes. It would have been prior  
11:48:44 3 to December fourteen, 1994, and in looking --

11:48:49 4 THE COURT: That don't tie together.

11:48:51 5 THE WITNESS: And other dates it would have  
11:48:53 6 been 12/5, 1994 because I see dates that appear on this  
11:48:57 7 ZZZ and I know the discovery went over on 12/14, 1994.  
11:49:02 8 The Exhibit 140 handed to me has an entry date of 9/23,  
11:49:06 9 1995.

11:49:09 10 MS. BIANCO: Judge, I thought we established  
11:49:10 11 that when he testified that this was a continuing work  
11:49:11 12 in progress.

11:49:12 13 THE COURT: What he testified to is he could  
11:49:14 14 not give you a specific date when he stopped compiling  
11:49:17 15 ZZZ.

16 MS. BIANCO: Right.

11:49:17 17 THE COURT: He said sometime between December  
11:49:19 18 fifth and the fourteenth of December, 1994 because Z  
11:49:25 19 relates specifically to those five boxes.

11:49:28 20 MS. BIANCO: Judge, when I questioned him with  
11:49:30 21 all due respect, exhibit -- excuse me.

11:49:33 22 THE COURT: ZZZ.

11:49:35 23 MS. BIANCO: Lead fourteen-hundred was written  
11:49:36 24 in April of ninety-five, and I asked him specifically  
11:49:39 25 why would that be referenced lead fourteen-hundred.

11:49:41 1 THE COURT: Because he explained at that point  
11:49:44 2 there seemed to be some confusion regarding the  
11:49:46 3 difference between the lead number and a lead sheet  
11:49:48 4 which he explained, but he -- he testified, I'm not  
11:49:51 5 sure if it was to you or Mr. Moody, that this ZZZ was  
11:49:56 6 compiled for the purpose of keeping track of what was  
11:50:00 7 going into those five boxes, one to Fahey, one to Walsh  
11:50:03 8 and one to the Court. I'm not sure which attorney  
11:50:05 9 asked him what was the specific dates. He said he  
11:50:08 10 could not give you a specific date, it was over a time  
11:50:11 11 frame, and actually I think you pushed him for a  
11:50:13 12 specific date, he said the last date would have been  
11:50:14 13 let's say December fourteenth, 2000, I'm sorry,  
11:50:18 14 December fourteenth, 1994.

11:50:19 15 Q. So that there was no -- so I'm clear, you did not  
11:50:24 16 add any information to those notes after December  
11:50:28 17 fourteenth, 1994, there's no more information added to your  
11:50:35 18 notes.

11:50:35 19 THE COURT: Again, is this ZZZ?

11:50:37 20 MS. BIANCO: ZZZ, yes, sorry.

11:50:38 21 THE COURT: Okay, thank you.

11:50:39 22 MS. BIANCO: I think we're all confused at  
11:50:41 23 this point.

11:50:41 24 THE COURT: I understand.

11:50:44 25 A. I can testify certainly that ZZZ was used and

11:50:54 1 created by me to insure what was in the file, what was  
11:50:57 2 photocopied and reproduced. That thereafter, as additional  
11:51:02 3 discovery came in, that additional discovery, after the  
11:51:07 4 12/14 submission and other dates, that would have been  
11:51:12 5 affixed to a file letter, and the documents that were part  
11:51:16 6 of it would have been file copies, DA's Office, would have  
11:51:20 7 been rubber banded or stapled or paper clipped together as  
11:51:23 8 part of that. I don't have a clear recollection as to  
11:51:27 9 whether or not I wrote anything on this after December or  
11:51:33 10 prior or after December fourteen, 1994. I don't have a  
11:51:37 11 clear recollection if I wrote something additional on it  
11:51:40 12 afterwards.

11:51:42 13 Q. Okay, so the Junius Pond entry, do you have a clear  
11:51:47 14 recollection when you wrote that entry?

11:51:50 15 A. Yes. The --

11:51:52 16 THE COURT: ZZZ.

11:51:53 17 MS. BIANCO: ZZZ, yes.

11:51:54 18 A. Junius Pond, the entry that I wrote Junius Pond,  
11:52:00 19 would be because there was a file in the Sheriff's  
11:52:03 20 Department overall investigation report that had a sub-file  
11:52:07 21 created that had Julius Pond and I wrote down the names of  
11:52:11 22 those files. That would have been created by writing by me  
11:52:17 23 immediately prior to twelve -- 12/5, 1994 through 12/14,  
11:52:22 24 1994.

11:52:23 25 Q. So you're stating with certainty that that lead, the

11:52:27 1 lead I gave you regarding Junius Pond, was not in the sub-  
11:52:31 2 file at the time you wrote that?

11:52:32 3 A. No, no.

11:52:33 4 Q. That document ZZZ.

11:52:35 5 A. I'm not saying that at all.

11:52:36 6 Q. The Junius Pond.

11:52:37 7 THE COURT: Correct.

11:52:37 8 A. I'm not saying that, miss, I'm saying this document  
11:52:40 9 ZZZ when I wrote on it and put in blocks different things,  
11:52:47 10 it was reflective of a sub-file within the entire file.

11:52:53 11 Q. And you don't know when the last sub-file, when the  
11:52:55 12 last writing was about the sub-file, is that fair?

11:52:58 13 A. This includes also that there were leads. The  
11:53:01 14 sub-files didn't mean that a lead number or lead sheet was  
11:53:06 15 within a sub-file. There was a large quantity of material.  
11:53:12 16 I see here that lead numbers were written down by me. I  
11:53:22 17 guess that's the best answer I can give you, miss.

11:53:24 18 Q. You do agree that the lead fourteen-hundred is in  
11:53:27 19 ZZZ, correct?

11:53:33 20 A. I can find it. Just bear with me. I can see I  
11:53:50 21 wrote down a number of numbers, twelve-oh-one through  
11:53:58 22 fourteen-hundred, and at a different location,  
11:54:01 23 twelve-fifty-one through fifteen-hundred.

11:54:04 24 Q. So lead fourteen-hundred is in your writing,  
11:54:08 25 correct?



11:54:09 1 THE COURT: This line's been pursued.

11:54:11 2 MS. BIANCO: I'm just trying to establish  
11:54:12 3 whether or not that particular lead --

11:54:14 4 MR. MOODY: Object to what she's trying to  
11:54:16 5 establish. The objection is that it's been asked and  
11:54:18 6 answered.

11:54:18 7 MS. BIANCO: He never answered whether he gave  
11:54:20 8 it to Judge Fahey or not, that's all I want to know,  
11:54:22 9 that's the last question.

11:54:23 10 THE COURT: Gave what to Judge Fahey?

11:54:25 11 MS. BIANCO: That particular lead.

11:54:26 12 MR. MOODY: Well, how's that --

11:54:27 13 THE COURT: What particular lead,  
11:54:29 14 fourteen-hundred or fourteen-sixteen?

11:54:31 15 MS. BIANCO: Fourteen-sixteen.

11:54:32 16 THE COURT: Based on this witness's testimony,  
11:54:33 17 it's beyond the scope of redirect.

11:54:36 18 MS. BIANCO: Well, that -- Judge, with all due  
11:54:38 19 respect, that's why I was asking about the Junius Pond  
11:54:40 20 notation.

11:54:41 21 THE COURT: And he said to the best of his  
11:54:43 22 recollection that ended December fourteenth, 2000 --  
11:54:47 23 2000, excuse me, 1994.

11:54:49 24 MS. BIANCO: But it's referenced lead number  
11:54:50 25 fourteen-hundred which was created in April so it

11:54:53 1 couldn't possibly be.

11:54:54 2 THE COURT: But he distinguished between a  
11:54:55 3 lead and a lead sheet.

11:54:57 4 MS. BIANCO: Okay, then I have no further  
11:55:00 5 questions.

11:55:00 6 THE COURT: Thank you. Don't leave with my  
11:55:01 7 evidence please.

11:55:01 8 MS. BIANCO: I'm going to put that back with  
11:55:03 9 all the other exhibits.

11:55:04 10 THE COURT: Okay, thank you. It is now five  
11:55:06 11 of twelve. Why don't we take a break until five after  
11:55:10 12 one. Does that give everybody enough time?

11:55:14 13 MR. OAKES: Yes, Your Honor.

11:55:20 14 (Whereupon, there was a recess.)

12:57:03 15 THE COURT: Mr. Dodd, you're still under oath,  
01:01:09 16 sir.

01:01:09 17 THE WITNESS: Yes, sir.

01:01:12 18 THE COURT: Mr. Moody.

01:01:13 19 MR. MOODY: Judge, before I go, I apologize  
01:01:15 20 for my earlier outburst this morning. I apologize for  
01:01:19 21 that in the middle of court.

01:01:20 22 THE COURT: Okay, apology accepted.

01:01:22 23 MR. MOODY: Thank you.

24 REDIRECT EXAMINATION

01:01:24 25 BY MR. MOODY:

01:01:25 1 Q. Mr. Dodd, do you remember you were asked some  
01:01:28 2 questions about police officers' names that were -- that  
01:01:30 3 showed up in Exhibit ZZZ which is the pad here.

01:01:44 4 A. Yes, sir, I was asked questions.

01:01:46 5 Q. And if you turn to the last page, the questions you  
01:01:50 6 were asked, were all those, all of the police officers that  
01:01:54 7 you listed there that were involved in the investigation of  
01:01:57 8 Heidi Allen?

01:01:57 9 A. Oh, absolutely not, no, no, no, no.

01:02:01 10 Q. Do you recognize the name Deputy Richard Curtis?

01:02:05 11 A. Yes.

01:02:06 12 Q. And what was his relation to the Heidi Allen  
01:02:09 13 investigation?

01:02:10 14 A. First responding road patrol deputy responded to the  
01:02:13 15 D & W Convenience Store on April third, 1994 regarding the  
01:02:17 16 abduction of Heidi.

01:02:18 17 Q. Did Deputy Curtis do a police report?

01:02:22 18 A. Absolutely yes.

01:02:22 19 Q. Is Deputy Curtis's name listed in those lists of  
01:02:25 20 names at the end of Exhibit Z?

01:02:27 21 A. No, it's not.

01:02:29 22 Q. ZZZ. Would his report have been included in the  
01:02:38 23 file or sub-file labeled police reports?

01:02:41 24 MS. PEEBLES: Judge, objection. Leading.

01:02:44 25 Leading the witness all over.

01:02:45 1 THE COURT: I'll sustain it.

01:02:48 2 Q. Where would Deputy Curtis's report have been  
01:02:51 3 included in that, in that document and in the -- the  
01:02:59 4 Exhibit ZZZ?

01:03:01 5 MS. PEEBLES: Objection. Beyond the scope.

01:03:04 6 THE COURT: Beyond the scope of what, cross?

01:03:08 7 MS. PEEBLES: Recross. This is the third  
01:03:10 8 redirect or the second redirect and it's beyond the  
01:03:12 9 scope and it's leading.

01:03:13 10 THE COURT: Well, I don't think it's leading.

01:03:15 11 MS. PEEBLES: Curtis was never mentioned.

01:03:17 12 MR. MOODY: I think my point was that --

01:03:19 13 THE COURT: You brought the idea of police  
01:03:20 14 officers. It's absolutely allowed.

01:03:23 15 Q. Where would his report have been for lack of a  
01:03:26 16 better term referenced or included in that -- in that ZZZ?

01:03:30 17 A. Police reports.

01:03:31 18 Q. I'm going to show you Defendant's Exhibit 5 and ask  
01:03:39 19 you if you recognize that.

01:03:43 20 A. Yes. I recognize this Exhibit No. 5, sir.

01:04:18 21 Q. And what is Exhibit 5?

01:04:19 22 A. Exhibit No. 5 would be the Oswego County Sheriff's  
01:04:25 23 Department investigation report, but the typed report  
01:04:28 24 relative to the abduction of Heidi Allen on April third,  
01:04:31 25 1994 and various entries by police officers who

01:04:35 1 participated in the initial investigation by name and  
01:04:40 2 statement as to generally what they did.

01:04:41 3 Q. And is Deputy Curtis's report in that Exhibit 5?

01:04:47 4 A. It is, yes, sir, it is.

01:04:49 5 Q. Are there any other police officers listed in that  
01:04:53 6 police report?

01:04:53 7 A. Sergeant Burdicks (ph) is listed, Sergeant Lortie's  
01:05:01 8 report is listed. I see --

01:05:04 9 Q. Then turning --

01:05:05 10 A. Just --

01:05:06 11 Q. Okay, sorry I --

01:05:20 12 A. Those three I see here.

01:05:22 13 Q. I'm showing you again Exhibit ZZZ, if you could turn  
01:05:26 14 to the last page of Exhibit ZZZ, are either Sergeant  
01:05:31 15 Burdick or Sergeant Lortie listed?

01:05:33 16 MS. PEEBLES: Again, Judge, he's leading the  
01:05:35 17 witness.

01:05:36 18 THE COURT: Ask a non-leading manner.

01:05:41 19 Q. Do you see -- do you see either of those names in  
01:05:48 20 the report?

01:05:48 21 A. No. They are not written by me, no, sir.

01:05:51 22 Q. Now, turning now to Exhibit 52, you were asked some  
01:06:01 23 questions about a fax number that's at the top of that  
01:06:05 24 document. Is that -- do you remember those questions?

01:06:07 25 A. Yes.

01:06:07 1 Q. Whose statement or what document is that  
01:06:14 2 specifically?

01:06:14 3 A. Fifty-two is a sworn statement in part of  
01:06:19 4 Christopher L. Bivens. Actually there's two pieces of  
01:06:24 5 paper that make up this exhibit. First page, fifty-two, is  
01:06:28 6 commonly known as a statement of sworn deposition, and page  
01:06:32 7 two appears to be a diagram of Christopher Bivens.

01:06:35 8 Q. Okay, and I'll take that back. Actually keep that.  
01:06:39 9 That -- the fax -- the date of the fax on that is what?

01:06:44 10 A. May thirty-first, 1994.

01:06:47 11 Q. Do you remember when Richard Thibodeau's preliminary  
01:06:51 12 hearing was?

01:06:55 13 A. No, I can't -- I don't recall precisely the date. I  
01:07:11 14 do not.

01:07:45 15 (People's Exhibit AAAA was marked for  
01:07:47 16 identification).

01:07:47 17 Q. If I were to show you a letter from Judge Elliot,  
01:07:52 18 might that refresh your recollection?

01:07:54 19 A. Yes.

01:07:57 20 Q. Showing you exhibit -- what has been marked as  
01:07:59 21 Exhibit 4-A, do you recognize that document?

01:08:11 22 MS. PEEBLES: Judge, I guess I'm going to  
01:08:13 23 object because the witness has already testified that  
01:08:16 24 he never faxed a document to Michael Bohrer. I don't  
01:08:20 25 know what the purpose of this line of questioning is.

01:08:22 1 He doesn't even -- he said he didn't even fax the  
01:08:24 2 document so I don't know.

01:08:26 3 MR. MOODY: I believe he said he didn't fax it  
01:08:27 4 to Michael Bohrer. I'm trying to establish with some  
01:08:31 5 possibility of who he did fax it to.

01:08:33 6 THE COURT: I'll allow it.

01:08:34 7 A. It's a letter from Surrogate Judge Elliot to myself  
01:08:39 8 dated May twenty-six, 1994.

01:08:41 9 Q. Okay, and in reviewing that, does that refresh your  
01:08:43 10 recollection as to when Richard Thibodeau's preliminary  
01:08:46 11 hearing was?

01:08:47 12 A. June first, 1994.

01:08:49 13 Q. Okay, and do you remember who or whether or not more  
01:08:56 14 precisely Judge Walsh was assigned or was representing  
01:09:00 15 Richard Thibodeau at that point in time?

01:09:02 16 A. He was. Attorney Walsh was, yes.

01:09:05 17 Q. Do you recollect whether at the preliminary hearing  
01:09:09 18 on June first of 2000, or excuse me, of 1994 whether or not  
01:09:13 19 Christopher Bivens testified?

01:09:20 20 MS. PEEBLES: Again, Judge, I'm objecting  
01:09:22 21 under relevance here.

01:09:23 22 THE COURT: Yeah, I'm kind of losing the  
01:09:25 23 relevance.

01:09:26 24 MR. MOODY: Judge, I -- I don't want to give  
01:09:29 25 the witness the answer that I believe is happening, but

01:09:31 1 I think that if I can have just a little bit of leeway,  
01:09:35 2 if he remembers I think it will become clear what I'm  
01:09:38 3 trying to get at.

01:09:40 4 MS. PEEBLES: Judge, he said on recross that  
01:09:43 5 he didn't remember faxing any documents to anyone so  
01:09:48 6 that's his answer. Whatever Mr. Moody thinks he's  
01:09:52 7 doing at this point is irrelevant.

01:09:55 8 THE COURT: Isn't it just bolstering?

01:09:57 9 MR. MOODY: Well, Judge, the insinuation is  
01:10:00 10 out there somehow that Donald Dodd or someone in the  
01:10:03 11 District Attorney's Office faxed --

01:10:05 12 THE COURT: You're assuming that I've taken  
01:10:06 13 that insinuation.

01:10:08 14 MR. MOODY: I understand.

01:10:08 15 THE COURT: Because Mr. Dodd said he didn't  
01:10:10 16 fax it.

01:10:10 17 MR. MOODY: Pardon me?

01:10:11 18 THE COURT: Mr. Dodd said he didn't fax it.

01:10:14 19 MR. MOODY: Well, I'm trying to refresh his  
01:10:16 20 recollection as to whether he might because I believe  
01:10:17 21 his testimony was he didn't fax it to Michael Bohrer.

01:10:21 22 MS. PEEBLES: No. His testimony was he didn't  
01:10:22 23 fax it so you're trying to get him to say he did fax  
01:10:24 24 it.

01:10:25 25 MR. MOODY: I'm trying to refresh his



01:10:27 1 recollection as to whether he did fax it.

01:10:29 2 THE COURT: How quickly are you going to get  
01:10:30 3 there?

01:10:30 4 MR. MOODY: Pardon me?

01:10:31 5 THE COURT: And why's it relevant?

01:10:32 6 MR. MOODY: Well, I just think it explains --  
01:10:36 7 I think it explains on who it was faxed to and  
01:10:39 8 therefore might explain how it ended up in the hand of  
01:10:42 9 Michael Bohrer but --

01:10:43 10 MS. PEEBLES: First of all, he said he didn't  
01:10:46 11 know who it was faxed to.

01:10:47 12 THE COURT: His recollection is being  
01:10:48 13 refreshed, Ms. Peebles.

01:10:49 14 MS. PEEBLES: No. He testified that he has no  
01:10:52 15 idea and he was explaining facsimiles and the fact that  
01:10:53 16 he had no recollection and he didn't fax it. Now he's  
01:10:56 17 trying to impeach him.

01:10:57 18 MR. MOODY: Well, he just said he had no  
01:10:59 19 recollection and what I'm trying to do is refresh his  
01:11:01 20 recollection.

01:11:01 21 THE COURT: Get there fast please.

01:11:07 22 MR. MOODY: Let's get it this way. Actually I  
01:11:09 23 got to get this marked.

01:11:11 24 (People's Exhibit BBBB was marked for  
01:11:13 25 identification).

01:11:43 1 Q. I'm going to show you what's been marked as Exhibit  
01:11:48 2 BBBB and just direct your attention to exhibit -- the first  
01:11:50 3 page of that and ask you if you recollect now faxing  
01:11:54 4 anything on May thirty-first, 1994.

01:11:57 5 THE COURT: I didn't hear you.

01:11:59 6 MR. MOODY: I'm sorry, I'm going to ask you,  
01:12:01 7 Judge, I'm asking the witness if he now --

01:12:04 8 MS. PEEBLES: Judge, first of all, he never  
01:12:05 9 said --

01:12:06 10 THE COURT: Hold on, Ms. Peebles. He was  
01:12:08 11 talking. Mr. Moody.

01:12:08 12 MR. MOODY: If this refreshes his recollection  
01:12:12 13 as to whether he may have faxed anything on May  
01:12:15 14 thirty-first, 1994.

01:12:17 15 THE COURT: Ms. Peebles.

01:12:18 16 MS. PEEBLES: Okay, Judge, the witness did not  
01:12:21 17 say he didn't recall, he said he didn't fax it, and the  
01:12:25 18 question becomes how did it get in Mr. Bohrer's box,  
01:12:28 19 and this witness has no idea, and he said he didn't fax  
01:12:30 20 any documents, so I'm not quite sure why Mr. Moody  
01:12:34 21 thinks he's refreshing Mr. Dodd's recollection when  
01:12:37 22 he's already testified that he didn't fax any  
01:12:39 23 documents.

01:12:39 24 THE COURT: Mr. Moody, I don't see where  
01:12:41 25 you're going with this. Let's just move on.

01:13:25 1 MR. MOODY: I have no further questions.

01:13:27 2 THE COURT: Ms. Bianco?

01:13:28 3 MS. BIANCO: No, Judge. No further questions.

01:13:32 4 THE COURT: Mr. Dodd, you're done. Thank you.

01:13:34 5 THE WITNESS: Thank you.

01:13:35 6 THE COURT: Thank you, sir. Mr. Moody? Next?

01:13:42 7 MR. OAKES: Your Honor, the People call Darcy

01:13:44 8 Purdy.

01:13:45 9 THE COURT: Darcy Purdy.

01:14:05 10 THE CLERK: Stand up please. Raise your right

01:14:29 11 hand, put your left on the Bible.

01:14:31 12 D A R C Y P U R D Y, Called as a witness, having been duly

01:14:34 13 sworn, was examined and testified as follows:

01:14:34 14 THE CLERK: Please state your name for the

01:14:39 15 record.

01:14:39 16 THE WITNESS: Darcy Purdy.

01:14:41 17 THE CLERK: Spell your first name.

01:14:42 18 THE WITNESS: D-A-R-C-Y.

01:14:44 19 THE CLERK: And your last name?

01:14:45 20 THE WITNESS: P-U-R-D-Y.

01:14:47 21 THE CLERK: Have a seat please.

01:14:48 22 THE COURT: Ms. Purdy, before we start, I'm

01:14:50 23 going to ask you whether or not you consent to having

01:14:51 24 your testimony audio and video taped.

01:14:54 25 THE WITNESS: No, I'd rather not.

01:14:55 1 THE COURT: No consent. Okay, that's fine.

01:15:05 2 MR. OAKES: And Your Honor, before I begin  
01:15:08 3 examination, can I have some exhibits marked?

01:15:09 4 THE COURT: Of course.

5 (People's Exhibit CCCC was marked for  
6 identification).

7 (People's Exhibit DDDD was marked for  
8 identification).

9 (People's Exhibit EEEE was marked for  
10 identification).

11 (People's Exhibit FFFF was marked for  
12 identification).

01:17:34 13 (People's Exhibit GGGG was marked for  
01:17:37 14 identification).

15 DIRECT EXAMINATION

01:17:38 16 BY MR. OAKES:

01:17:39 17 Q. Good afternoon.

01:17:39 18 A. Good afternoon.

01:17:43 19 Q. Where are you employed, ma'am?

01:17:45 20 A. At Cardinale & DelVecchio Law Firm.

01:17:49 21 Q. What's your position with the law firm?

01:17:50 22 A. Just a legal assistant.

01:17:52 23 Q. And what are your duties as a legal assistant?

01:17:54 24 A. Handling traffic files, some criminal files for  
01:17:59 25 Assigned Counsel and just answering the phone taking

01:18:02 1 messages.

01:18:03 2 Q. And how long have you worked for that law office as  
01:18:05 3 a legal assistant?

01:18:06 4 A. Fifteen months.

01:18:11 5 MR. OAKES: Your Honor, can I have the  
01:18:14 6 microphone please?

01:18:20 7 Q. And were you employed before that, Darcy?

01:18:23 8 A. Yes.

01:18:23 9 Q. Where were you employed before that?

01:18:24 10 A. ITT Technical Institute.

01:18:26 11 Q. And what was your position there?

01:18:27 12 A. A recruiter.

01:18:28 13 Q. And how long did you work there for?

01:18:30 14 A. Fourteen years.

01:18:31 15 Q. Darcy, do you know a person -- do you know a person  
01:18:56 16 by the name of Deb Vecchio?

01:18:57 17 A. Yes.

01:18:58 18 Q. And how do you know Deb Vecchio?

01:19:01 19 A. She was my landlord for a time.

01:19:05 20 Q. And when did you first meet Ms. Vecchio?

01:19:09 21 A. Like winter of ninety-two.

01:19:15 22 Q. And you said she was your landlord. You rented a  
01:19:20 23 place from her?

01:19:20 24 A. Yes.

01:19:21 25 Q. And where was that?

- 01:19:22 1 A. A trailer on Rice Road.
- 01:19:24 2 Q. And do you know who the trailer belonged to?
- 01:19:27 3 A. I believe her father.
- 01:19:29 4 Q. Do you recall his name?
- 01:19:32 5 A. I don't.
- 01:19:33 6 Q. And when you say Rice Road, do you know what
- 01:19:36 7 township that's in?
- 01:19:37 8 A. Parish.
- 01:19:38 9 Q. Was it a Parish mailing address?
- 01:19:40 10 A. Yes.
- 01:19:41 11 Q. Do you know if it's actually in the township of
- 01:19:44 12 Parish or township of Mexico?
- 01:19:45 13 A. I don't.
- 01:19:46 14 Q. Okay, but here in Oswego County?
- 01:19:48 15 A. Yes.
- 01:19:49 16 Q. And the trailer that you rented from Deb Vecchio,
- 01:19:53 17 how close was that to Deb Vecchio's residence?
- 01:19:56 18 A. You could see her place from there so a couple
- 01:20:01 19 hundred feet, or fifty, I'm not sure how far, but I could
- 01:20:03 20 see her house from there.
- 01:20:05 21 Q. Okay, close proximity?
- 01:20:07 22 A. Yes, walking distance, um hum.
- 01:20:34 23 MR. OAKES: Your Honor, can I approach the
- 01:20:37 24 witness?
- 01:20:37 25 THE COURT: Absolutely.

01:20:38 1 Q. Darcy, I'm handing you what's been received in  
01:20:45 2 evidence as Defendant's Exhibit 84. You mind taking that  
01:20:49 3 for a moment? Do you recognize that document?  
01:20:50 4 A. Yes.  
01:20:51 5 Q. Can you tell the Court what that document is?  
01:20:52 6 A. Our lease.  
01:20:54 7 Q. And when you say "our lease," who do you mean?  
01:20:56 8 A. My ex-husband, Tom Rathbun.  
01:20:59 9 Q. And who was the lease -- was you and Tom both living  
01:21:03 10 at that residence?  
01:21:05 11 A. Yes.  
01:21:05 12 Q. And who was the lease between?  
01:21:07 13 A. Us and Deb Vecchio in care of Joyce Neat and Walter  
01:21:14 14 Rice, Sr.  
01:21:15 15 Q. And did you sign that document?  
01:21:17 16 A. Yes.  
01:21:18 17 Q. Where does your signature appear on that?  
01:21:21 18 A. On the top, first signature.  
01:21:23 19 Q. Okay, and do you recall when you executed that  
01:21:28 20 lease?  
01:21:29 21 A. I don't recall, but I know I've seen it so it was  
01:21:34 22 December of ninety-two.  
01:21:35 23 Q. Okay, and for this lease, when was the lease term  
01:21:40 24 set to begin for you to move into the place?  
01:21:43 25 A. I believe right away.

- 01:21:45 1 Q. Okay. So either late December or January?
- 01:21:50 2 A. Yes.
- 01:21:50 3 Q. So late December of ninety-two or January of
- 01:21:53 4 ninety-three?
- 01:21:54 5 A. Correct.
- 01:21:55 6 Q. And did you move in at that time period?
- 01:22:01 7 A. Yes.
- 01:22:01 8 Q. And who moved in at that time?
- 01:22:03 9 A. Both Tom and I.
- 01:22:04 10 Q. What was your relationship with Tom at that time?
- 01:22:08 11 A. We were still dating.
- 01:22:10 12 Q. At some point did your relationship with Tom change?
- 01:22:14 13 A. Yes. We got married.
- 01:22:16 14 Q. When was your wedding?
- 01:22:17 15 A. September tenth, 1994.
- 01:22:20 16 Q. And where were you married?
- 01:22:21 17 A. We were married at St. Michael's Church in Central
- 01:22:26 18 Square.
- 01:22:26 19 Q. Where were you living at the time that you got
- 01:22:29 20 married, on the date that you got married?
- 01:22:31 21 A. At 7271 Rice Road.
- 01:22:35 22 Q. And when we refer to 7271 Rice Road, that's the
- 01:22:39 23 trailer that you rented from Deb Vecchio?
- 01:22:41 24 A. Yes.
- 01:22:42 25 Q. Were there any other properties that you had ever



01:22:44 1 rented from her?

01:22:45 2 A. No.

01:22:45 3 Q. Just the one?

01:22:46 4 A. Correct.

01:22:48 5 Q. When was the last time you were at that property,  
01:22:55 6 Darcy?

01:22:56 7 A. Just recently when I met you up there. I don't know  
01:23:03 8 the exact date.

01:23:04 9 Q. Okay, sometime this winter?

01:23:05 10 A. Yes.

01:23:06 11 Q. January of this year?

01:23:09 12 A. Yes.

01:23:11 13 Q. And does the property appear today the same  
01:23:14 14 condition as it was when you rented it?

01:23:16 15 A. No.

01:23:16 16 Q. How is it different?

01:23:18 17 A. The trailer no longer exists.

01:23:21 18 Q. Is there still a structure on the property?

01:23:23 19 A. Yes.

01:23:24 20 Q. What type of structure is on the property when you  
01:23:27 21 visited in January of 2015?

01:23:28 22 A. A garage.

01:23:30 23 Q. And the garage that you saw there two months ago,  
01:23:34 24 was it in the same condition as it was when you rented the  
01:23:36 25 property if you recall?

01:23:41 1 A. No. I didn't recall it being the same.

01:23:45 2 Q. In what way is it different?

01:23:49 3 A. It seemed bigger.

01:23:59 4 THE COURT: Just give me a second please.

01:24:01 5 MR. OAKES: Certainly.

01:24:02 6 (Whereupon, there was a pause in the  
01:25:23 7 proceeding.)

01:25:23 8 THE COURT: Sorry about that. Go ahead.

01:25:31 9 Q. Darcy, I'm going to hand you what's been received as  
01:25:36 10 People's Exhibits FFF, GGG and HHH and ask you to take a  
01:25:42 11 look at those. Do you recognize what's shown in those  
01:25:52 12 photographs?

01:25:52 13 A. Yes.

01:25:52 14 Q. And what is it?

01:25:54 15 A. The garage.

01:25:55 16 Q. Okay, is that the property that you and I visited in  
01:25:58 17 January?

01:25:58 18 A. Yes.

01:25:59 19 Q. And is that the property where the trailer was  
01:26:02 20 located?

01:26:02 21 A. Yes.

01:26:03 22 Q. And again, the trailer's not shown in these  
01:26:06 23 photographs though, correct?

01:26:07 24 A. Correct.

01:26:11 25 Q. Now Darcy, you testified a few moments ago that you

01:26:15 1 were living at the trailer when you got married on  
01:26:18 2 September tenth of ninety-four?

01:26:19 3 A. Yes.

01:26:19 4 Q. From when you moved in in January of ninety-three to  
01:26:23 5 the date of your wedding, had you lived at that residence  
01:26:26 6 continuously?

01:26:27 7 A. Yes.

01:26:28 8 Q. Did you ever move to another location?

01:26:30 9 A. No.

01:26:31 10 Q. And what was the -- what was the street number for  
01:26:35 11 the residence when you first moved in if you recall?

01:26:37 12 A. 7271 Rice Road.

01:26:40 13 Q. And did that address change at some point while you  
01:26:43 14 were living there?

01:26:43 15 A. Yes.

01:26:44 16 Q. And do you recall what it changed to?

01:26:45 17 A. 66 Rice Road.

01:26:47 18 Q. Was that when the 911 system took effect?

01:26:50 19 A. I believe so.

01:26:51 20 Q. Now Darcy, we had talked previously about your  
01:26:56 21 wedding, and how do you recall that you were living at that  
01:26:59 22 residence at the time that you got married?

01:27:02 23 A. Well, I know I was living there because I was  
01:27:07 24 getting ready for the wedding, and I would walk from that  
01:27:10 25 property up to like Route 11 and back, I wouldn't go far

01:27:13 1 because it was kind of a remote road, but I know I was  
01:27:17 2 walking every day, and then I know that our rehearsal  
01:27:20 3 dinner was like a barbecue at that place.

01:27:25 4 Q. And Darcy, Darcy, I'm going to hand you what's been  
01:27:58 5 marked for identification as Exhibit 4-C or CCCC, an  
01:28:04 6 envelope that I'm taking out what's in it. Do you  
01:28:07 7 recognize the document that's contained in the envelope?

01:28:09 8 A. Yes.

01:28:10 9 Q. What is that document?

01:28:11 10 A. It's a copy of the registry book from what was St.  
01:28:15 11 Michael's Parish which is now Divine Mercy Parish.

01:28:19 12 Q. And who obtained that?

01:28:20 13 A. I did.

01:28:21 14 Q. And that document has a raised seal?

01:28:23 15 A. Yes.

01:28:24 16 Q. And when did you obtain that?

01:28:25 17 A. In January.

01:28:26 18 Q. Of this year?

01:28:27 19 A. Yes.

01:28:28 20 Q. And what -- what is significant about that document,  
01:28:32 21 Darcy?

01:28:32 22 A. It --

01:28:33 23 MS. PEEBLES: Judge, I'm going to object.

01:28:34 24 THE COURT: Why?

01:28:35 25 MS. PEEBLES: Why doesn't he ask her a

01:28:37 1 question. What's significant about that document?

01:28:43 2 THE COURT: Can you rephrase the question?

01:28:44 3 Q. That document, it's a registry for marriage?

01:28:48 4 A. Yes.

01:28:49 5 Q. And are you and Tom listed on that registry?

01:28:52 6 A. Yes.

01:28:53 7 Q. And at the time that you registered, is your address  
01:28:56 8 reflected on that document?

01:28:58 9 A. Yes.

01:28:58 10 Q. And you recognize this registry?

01:29:03 11 A. Yes.

01:29:03 12 MR. OAKES: Your Honor, at this time the  
01:29:04 13 People would offer Exhibit CCCC.

01:29:08 14 MS. PEEBLES: No objection.

01:29:08 15 THE COURT: No objection. Four C, four times  
01:29:14 16 C is entered.

17 (People's Exhibit CCCC was received in  
01:29:15 18 evidence).

01:29:15 19 MR. OAKES: For shorthand can we call it 4-C,  
01:29:19 20 4-D, is that easier or --

01:29:20 21 THE COURT: That's fine. I just don't want to  
01:29:21 22 be confused with the defendant's exhibits.

01:29:23 23 Q. Okay, so for Exhibit 4-C, that shows yours and Tom's  
01:29:28 24 address at the time that you registered for the wedding and  
01:29:32 25 the time of your wedding?

01:29:33 1 A. It's the address we were at when they logged it in  
01:29:35 2 as our wedding like had taken place because they're in  
01:29:38 3 order.

01:29:39 4 Q. Okay, and what address is reflected on there?

01:29:41 5 A. 7271 Rice Road, Parish, New York.

01:29:44 6 Q. Now after your wedding on September ten of 1994, did  
01:30:02 7 you continue to reside at that residence on Rice Road?

01:30:05 8 A. Yes.

01:30:05 9 Q. For how long?

01:30:06 10 A. We bought a property and put a mobile home on it in  
01:30:12 11 January of ninety-six.

01:30:14 12 Q. And where was that property located?

01:30:16 13 A. 15 Rafferty Drive, Central Square, New York.

01:30:20 14 Q. And when did you move to that property in Central  
01:30:23 15 Square?

01:30:23 16 A. I don't recall the exact date but we -- shortly  
01:30:27 17 after we got the land.

01:30:29 18 Q. Okay, do you recall what year, month or year?

01:30:31 19 A. 1996.

01:30:33 20 Q. And so from January of ninety-three through the end  
01:30:38 21 of 1995, you continuously lived at that address on Rice  
01:30:42 22 Road?

01:30:42 23 A. Yes.

01:30:42 24 Q. And because you lived there, did you receive mail at  
01:30:44 25 that address?

01:30:44 1 A. Yes.

01:30:49 2 Q. And did you continue to send mail from that address  
01:30:52 3 while you were living there?

01:30:53 4 A. Yes.

01:30:54 5 Q. I'm first going to hand you, Darcy --

01:30:57 6 MS. PEEBLES: I haven't seen those.

01:30:59 7 MR. OAKES: Certainly.

01:31:29 8 Q. Darcy, I'm first going to hand you what's been  
01:31:33 9 marked for identification as FFFF. Do you recognize that?

01:31:37 10 A. Yes.

01:31:37 11 Q. And what is that?

01:31:38 12 A. It's a 1995 beach planner, North Carolinas Coast to  
01:31:45 13 Coast brochure.

01:31:46 14 Q. Okay, and when did you first see that or where did  
01:31:50 15 you first receive that?

01:31:51 16 A. In the mail at Rice Road.

01:31:53 17 Q. Okay, and is there a mailing address on that beach  
01:31:56 18 planner?

01:31:56 19 A. Yes.

01:31:56 20 Q. And who is it addressed to?

01:31:58 21 A. Darcy Rathbun, 7271 Rice Road, Parish, New York.

01:32:03 22 Q. And that was for 1995?

01:32:04 23 A. Yes.

01:32:05 24 Q. And again, that was your married name at the time?

01:32:07 25 A. Correct.

01:32:07 1 Q. And that's the address where you received it?

01:32:10 2 A. Yes.

01:32:11 3 Q. Handing you what's been marked as Exhibit EEEE, do  
01:32:15 4 you recognize that?

01:32:16 5 A. Yes.

01:32:18 6 Q. What is that Darcy?

01:32:19 7 A. Like a store, the Music Stand catalog.

01:32:27 8 Q. Okay, and is there a year shown on that catalog?

01:32:30 9 A. It says Santa's edition, 1995.

01:32:35 10 Q. And where did you receive that?

01:32:37 11 A. At my address at Rice Road.

01:32:39 12 Q. And is that mailing address on that catalog?

01:32:42 13 A. Yes.

01:32:43 14 Q. And what is the address shown on there?

01:32:45 15 A. It's under Darcy Russell, 7271 Rice Road, Parish.

01:32:50 16 Q. And that's the address where you obtained it?

01:32:53 17 A. Yes.

01:32:54 18 Q. So in 1995 you obtained both those documents, the  
01:32:58 19 catalog and the beach planner brochure?

01:33:00 20 A. Yes.

01:33:01 21 Q. At your residence on Rice Road?

01:33:03 22 A. Um hum. Yes.

01:33:04 23 Q. Darcy, I'm now going to hand you what's been marked  
01:33:08 24 for identification as DDDD. Do you recognize that?

01:33:10 25 A. Yes.



01:33:11 1 Q. And what is that?

01:33:12 2 A. It's my address book that I used when planning the  
01:33:15 3 wedding.

01:33:16 4 Q. Okay, and I'm going to ask you to open it up to the  
01:33:19 5 inside page, and again, that inside page, is it the same  
01:33:24 6 condition as when you provided it to me?

01:33:26 7 A. Yes.

01:33:26 8 Q. And is it in the same condition as when you had it  
01:33:29 9 and prepared it?

01:33:30 10 A. Yes.

01:33:31 11 Q. And whose handwriting is on the inside, Darcy?

01:33:33 12 A. Mine.

01:33:34 13 Q. And is there an address, your address reflected  
01:33:36 14 there?

01:33:37 15 A. Yes.

01:33:37 16 Q. And what's the original address that's written  
01:33:41 17 there?

01:33:41 18 A. Seven --

01:33:43 19 MS. PEEBLES: Judge, I'm going to object.

01:33:44 20 THE COURT: Based on?

01:33:45 21 MS. PEEBLES: They're not in evidence. He's  
01:33:48 22 asking her to read from a document not in evidence.

01:33:50 23 MR. OAKES: That's fine. Your Honor, I would  
01:33:52 24 offer the three exhibits then at this time, Exhibit  
01:33:56 25 DDDD.

01:33:56 1 MS. PEEBLES: Her handwritten notes? Well,  
01:33:59 2 I'll allow those in evidence if he agrees to allow Mr.  
01:34:02 3 Bohrer's handwritten notes into evidence that were in  
01:34:05 4 the box.

01:34:05 5 THE COURT: Hold it. Are we talking about  
01:34:07 6 DDDD, that one you're objecting to?

01:34:10 7 MS. PEEBLES: I won't object to any of those  
01:34:12 8 handwritten notes in all of her diaries if he agrees to  
01:34:17 9 allow the handwritten notes from Mr. Bohrer.  
01:34:20 10 Otherwise, I have the same objection that the  
01:34:22 11 prosecutor has.

01:34:23 12 THE COURT: Let's deal with the exhibits. Are  
01:34:25 13 you trying to move them all, Mr. Oakes?

01:34:26 14 MR. OAKES: I'll take them one at a time.

01:34:28 15 THE COURT: Which one are you offering first?

01:34:30 16 MR. OAKES: First I would offer EEEE, the  
01:34:33 17 Santa's edition, 1995 catalog this witness testified  
01:34:36 18 she received at that address.

01:34:38 19 MS. PEEBLES: I object to the relevance. I  
01:34:39 20 won't -- I won't concede, Judge. I don't see how it's  
01:34:42 21 relevant. She testified about receiving a piece of  
01:34:46 22 mail where she was residing so I object.

01:34:48 23 MR. OAKES: Your Honor, and if I may, I think  
01:34:49 24 it's very relevant. The defense has argued that  
01:34:52 25 Jennifer Wescott and/or Roger Breckenridge lived at

01:34:55 1 this address in April of 1994. They've offered the  
01:34:58 2 testimony of Deb Vecchio who said that Ms. -- that  
01:35:01 3 Darcy and her husband moved in in January ninety-three,  
01:35:05 4 but as best as she could remember, Ms. Vecchio said  
01:35:09 5 they only lived there a few months. This establishes  
01:35:11 6 that not only did they live there a few months, but  
01:35:14 7 through ninety-three, ninety-four and the end of  
01:35:16 8 ninety-five.

01:35:17 9 THE COURT: I'll allow it. They can move in.

01:35:19 10 MS. PEEBLES: I object to her handwritten  
01:35:20 11 notes.

01:35:21 12 THE COURT: We haven't gotten to that.

01:35:23 13 MS. PEEBLES: He was just questioning her and  
01:35:24 14 asked to have it moved in.

01:35:26 15 THE COURT: That was a whole different  
01:35:28 16 exhibit.

01:35:28 17 MS. PEEBLES: Which exhibit are you asking to  
01:35:30 18 be moved in?

01:35:31 19 MR. OAKES: I was taking them one at the time,  
01:35:32 20 and I said 4-E, the Santa catalog from 1995, I had  
01:35:36 21 moved and the Court received.

01:35:37 22 THE COURT: The Court will receive it.

23 (People's Exhibit EEEE was received in  
01:35:38 24 evidence).

01:35:38 25 MR. OAKES: Okay, next I'm offering Exhibit

01:35:42 1 FFFF, the 1995 vacation planner that she received at  
01:35:46 2 that address on Rice Road that she's had in her  
01:35:49 3 possession with a mailing address of Rice Road.

01:35:52 4 MS. PEEBLES: I guess it's a weight issue. I  
01:35:53 5 have no objection. The Court can take a look at that  
01:35:55 6 and weigh it against her testimony. I have no  
01:35:58 7 objection.

01:35:58 8 THE COURT: Okay, so that's in now too.

9 (People's Exhibit FFFF was received in  
01:35:59 10 evidence).

01:35:59 11 MR. OAKES: Okay, and next, Your Honor, I was  
01:36:01 12 offering Exhibit DDDD which is her personal address  
01:36:06 13 book with names and numbers that has her handwriting on  
01:36:09 14 it.

01:36:10 15 THE COURT: Okay.

01:36:10 16 MS. PEEBLES: And that's where I have the  
01:36:11 17 objection and I will not object if he agrees to concede  
01:36:15 18 that Michael Bohrer's documents, the handwritten notes  
01:36:18 19 that he agreed he authored, if he allows those into  
01:36:22 20 evidence, and I have no objection whatsoever to  
01:36:24 21 allowing her handwritten notes.

01:36:26 22 MR. OAKES: Well, there's a distinction  
01:36:28 23 between the purpose. I don't see the relevance of Mr.  
01:36:31 24 Bohrer's speculations and ruminations regarding this  
01:36:36 25 case whereas the defense has directly put in issue who

01:36:40 1 lived at 66 Rice Road at the time of April of 1994.  
01:36:44 2 What we're trying to establish is from January of  
01:36:46 3 ninety-three continuously through 1995 Darcy and her  
01:36:50 4 husband lived there which precludes Roger Breckenridge  
01:36:53 5 and Jennifer Wescott from living there and precludes  
01:36:56 6 them from having committed the allegations that are set  
01:36:58 7 forth in Tonya Priest's claim.

01:37:01 8 MS. PEEBLES: Okay, well, I guess --

01:37:02 9 MR. OAKES: It's very relevant.

01:37:04 10 MS. PEEBLES: That's for the Court to decide,  
01:37:06 11 not --

01:37:06 12 THE COURT: I'm going to keep it out. I'm  
01:37:08 13 going to keep it out.

01:37:09 14 MR. OAKES: That's fine.

01:37:10 15 THE COURT: We have four times F and four  
01:37:12 16 times E in.

01:37:33 17 MR. OAKES: Okay. Your Honor, again, may I  
01:37:35 18 approach the witness?

01:37:37 19 Q. Darcy, I'm handing you what's been marked as -- for  
01:37:40 20 identification as People's Exhibit GGGG and ask you if you  
01:37:44 21 recognize that.

01:37:45 22 A. Yes.

01:37:45 23 Q. What is that?

01:37:47 24 A. It's a card that I sent my mother.

01:37:50 25 Q. Okay, and when did you send that to your mother?

01:37:53 1 A. May ninth, 1994 is the postmark date.

01:37:58 2 MS. PEEBLES: Well, Judge, now she's again  
01:37:59 3 reading from something that's not been received into  
01:38:02 4 evidence.

01:38:02 5 THE COURT: Yeah.

01:38:03 6 MS. PEEBLES: Objection.

01:38:04 7 THE COURT: Sustained.

01:38:04 8 Q. With or without reading from it, do you generally  
01:38:07 9 recall when you sent that, Darcy?

01:38:10 10 A. Not until my mother sent it to me so --

01:38:14 11 THE COURT: I didn't hear what your answer  
01:38:15 12 was.

01:38:15 13 THE WITNESS: Not until my mother just  
01:38:17 14 recently sent it to me because she sent it to --

01:38:19 15 THE COURT: Okay.

01:38:20 16 THE WITNESS: You know, help out.

01:38:21 17 THE COURT: Okay.

01:38:22 18 Q. And you said your mother recently sent that to you.  
01:38:25 19 Why is that, Darcy?

01:38:26 20 A. 'Cause I was looking for things with my address on  
01:38:28 21 it from that time period.

01:38:30 22 Q. Okay, to verify that that's where you were living?

01:38:33 23 A. Yes.

01:38:34 24 MS. PEEBLES: Judge, objection.

01:38:35 25 THE COURT: What's the objection?

01:38:36 1 MS. PEEBLES: Leading.

01:38:37 2 THE COURT: It's leading. I'm not sure it's  
01:38:39 3 going to be moved in any way so --

01:38:42 4 Q. Okay, and your mom sent it to you recently?

01:38:44 5 A. Yes.

01:38:44 6 Q. And you provided to me today?

01:38:46 7 A. Yes.

01:38:47 8 Q. Do you recognize the handwriting on the outside of  
01:38:50 9 the envelope?

01:38:50 10 A. Yes.

01:38:50 11 Q. Whose handwriting is that?

01:38:51 12 A. Mine.

01:38:53 13 Q. And I would ask you to look at the card that's on  
01:38:56 14 the inside.

01:38:57 15 MS. PEEBLES: Judge, I'm going to object if  
01:38:58 16 she's going to read from something. It's not in  
01:39:00 17 evidence.

01:39:00 18 THE COURT: I don't think he's asking her to  
01:39:01 19 read.

01:39:02 20 THE WITNESS: There is nothing to read.

01:39:03 21 THE COURT: He hasn't asked her to read. He's  
01:39:04 22 asked her to look at it. He hasn't asked her to read  
01:39:07 23 anything yet.

01:39:08 24 Q. And do you recognize what's inside of that envelope?

01:39:10 25 A. Yes.

01:39:11 1 Q. And what is that?

01:39:11 2 A. It's a booklet about mothers.

01:39:13 3 Q. And have you seen that booklet before?

01:39:16 4 A. Yes.

01:39:16 5 Q. And where have you seen it before?

01:39:18 6 A. When I mailed it to her.

01:39:21 7 Q. And if you would put it back in the envelope please,

01:39:25 8 Darcy, and Darcy, where were you living when you sent this

01:39:31 9 to your mother?

01:39:32 10 A. At 7271 Rice Road.

01:39:34 11 Q. And how did you send it to her? Did you -- in what

01:39:39 12 manner did you send it to her?

01:39:40 13 A. I mailed it to her.

01:39:42 14 Q. Put stamps on it, placed it in the mail?

01:39:47 15 A. Yes.

01:39:47 16 Q. And do you recognize there being stamps on there?

01:39:50 17 A. Yes.

01:39:51 18 Q. And your return address is on there?

01:39:53 19 A. Yes.

01:39:58 20 MR. OAKES: Your Honor, at this time the

01:39:59 21 People would offer GGGG.

01:40:02 22 MS. PEEBLES: Same objection.

01:40:03 23 THE COURT: Sustained.

01:40:06 24 MR. OAKES: Your Honor, is it a relevance

01:40:08 25 ground? I'm just trying to find the ground for the



01:40:11 1 preclusion.

01:40:12 2 THE COURT: Same reason I precluded Mr.  
01:40:15 3 Bohrer's handwritten notes.

01:40:18 4 MR. OAKES: Well, I'm not offering for the  
01:40:20 5 truth of the matter of what's being asserted, Your  
01:40:22 6 Honor.

01:40:22 7 THE COURT: How do you prove the address if  
01:40:25 8 we're not -- that's what you're offering it for, right?

01:40:27 9 MR. OAKES: Well, for the address that she --  
01:40:28 10 that she had written, but part of what I'm trying to  
01:40:31 11 establish, Your Honor, is the date stamp that's on  
01:40:33 12 there of May fifth of ninety-four when she mailed it  
01:40:36 13 through the Postal Service which would establish when  
01:40:40 14 she mailed it.

01:40:40 15 THE COURT: If you want it for that limited  
01:40:42 16 purpose, that's fine.

01:40:43 17 MS. PEEBLES: That's for the truth of the  
01:40:44 18 matter. That's for the truth of the matter asserted.  
01:40:46 19 He is trying to say this stamp --

01:40:49 20 THE COURT: Your objection to Bohrer is  
01:40:50 21 handwritten notes. This is from the Post Office. She  
01:40:52 22 didn't put the date stamp on that.

01:40:55 23 MS. PEEBLES: I would object for the same  
01:40:56 24 reason, Judge. Absolutely.

01:40:58 25 THE COURT: Bohrer's objection is because his

01:41:00 1 handwritten notes.

01:41:01 2 MS. PEEBLES: Well, it's not offered for the  
01:41:04 3 truth. Bohrer's notes were not offered for the truth.  
01:41:06 4 They were offered for he created them and for -- Judge.

01:41:13 5 THE COURT: Just a second, Ms. Peebles.

01:41:15 6 MR. OAKES: If I may, Your Honor, Mr. Bohrer's  
01:41:17 7 ruminations in the notes, his personal thoughts on the  
01:41:21 8 case, have no bearing on the evidence in this hearing.  
01:41:23 9 The defense has very much put in issue who was living  
01:41:27 10 at 66 Rice Road in April of 1994, the day that Heidi  
01:41:32 11 was abducted, and who would have had access to that  
01:41:34 12 property to commit these offenses. Darcy Purdy has now  
01:41:38 13 testified that she lived there, and again, this is  
01:41:40 14 relevant because it helps establish again, in May fifth  
01:41:44 15 of 1994, if she's mailing it from that address, it  
01:41:47 16 certainly helps to establish she was living there in  
01:41:51 17 April of 1994.

01:41:51 18 MS. PEEBLES: Again, Judge, that's a weight  
01:41:54 19 issue, it's for Court to decide, not for Mr. Oakes, and  
01:41:56 20 as far as the notes that were drafted by Mr. Bohrer, it  
01:41:59 21 has everything to do with establishing his obsession  
01:42:02 22 with the case and the fact that he declared himself  
01:42:05 23 Investigator A.

01:42:07 24 THE COURT: I'm going to allow -- I think it's  
01:42:10 25 a different objection, Ms. Peebles. I'll allow this

01:42:12 1 one in because it's the date stamp, for the limited  
01:42:15 2 purpose of the date stamp. Thank you.

3 (People's Exhibit GGGG was received in  
01:42:20 4 evidence).

01:42:20 5 Q. Darcy, with GGGG you recognize it as something you  
01:42:25 6 mailed from your home address on Rice Road?

01:42:27 7 A. Yes.

01:42:27 8 MS. PEEBLES: You know, Judge, I just have to  
01:42:33 9 be clear on the record with regard to my objection on  
01:42:34 10 that. In order to -- in order for the stamp -- if the  
01:42:38 11 Court's considering to be relevant, you have to  
01:42:41 12 consider her handwritten notation in the corner.

01:42:44 13 Otherwise, it doesn't matter, it doesn't have the --

01:42:46 14 THE COURT: I can discard the information.

01:42:49 15 Ms. Peebles, I'm going to let it in for the limited  
01:42:52 16 purposes of date stamp only.

01:42:56 17 Q. Darcy, during the time that you lived on Rice Road,  
01:42:59 18 did you know a young man by the name of Darron Vecchio?

01:43:02 19 A. Yes.

01:43:02 20 Q. And who was he?

01:43:03 21 A. One of Debbie Vecchio's sons.

01:43:06 22 Q. And did you ever have contact with Darron Vecchio?

01:43:10 23 A. Yes.

01:43:11 24 Q. And where did that contact take place?

01:43:13 25 A. Outside, you know, I mean he was a young kid at that

01:43:19 1 time so, you know, he would come down and talk to my  
01:43:22 2 ex-husband. He was -- just seems like he was around, kids  
01:43:28 3 were outside, you know.

01:43:30 4 Q. Darcy, during the time that you lived there, let me  
01:43:33 5 ask you, what is your relationship with Jennifer Wescott?

01:43:36 6 A. I don't know a Jennifer Wescott.

01:43:38 7 Q. And what is your relationship with Roger  
01:43:41 8 Breckenridge?

01:43:41 9 A. I don't know a Roger Breckenridge.

01:43:44 10 Q. You've never known a Jennifer Wescott or Roger  
01:43:47 11 Breckenridge?

01:43:48 12 A. No, sir.

01:43:48 13 Q. Do you know a person by the name of Michael Bohrer?

01:43:50 14 A. No.

01:43:51 15 Q. Do you have a relationship with Mr. Bohrer?

01:43:57 16 A. No.

01:43:57 17 Q. What about James Steen, or he may go by the name of  
01:44:02 18 Thumper. What was the nature of your relationship with  
01:44:04 19 him?

01:44:04 20 A. None, don't know him.

01:44:18 21 MR. OAKES: Your Honor, I have no further  
01:44:20 22 questions for the witness.

01:44:21 23 THE COURT: Ms. Peebles or Ms. -- Ms.  
01:44:23 24 Peebles?

01:44:24 25 CROSS-EXAMINATION

01:44:25 1 BY MS. PEEBLES:

01:44:27 2 Q. Now Ms. Purdy, you testified you knew Darron  
01:44:40 3 Vecchio?

01:44:40 4 A. Yes.

01:44:41 5 Q. And you were young when you lived at Rice Road when  
01:44:47 6 you signed that lease?

01:44:48 7 A. Young twenties.

01:44:49 8 Q. You were twenty, twenty-one?

01:44:51 9 A. I'd have to do the math.

01:44:52 10 Q. Okay, was it -- would it be fair to say that at that  
01:44:56 11 point in time you were partying quite a bit in the trailer?

01:45:01 12 A. No.

01:45:01 13 Q. You weren't drinking?

01:45:02 14 A. No.

01:45:03 15 Q. You didn't have any parties?

01:45:04 16 A. No.

01:45:04 17 Q. You didn't party with Darron Vecchio?

01:45:06 18 A. No.

01:45:06 19 Q. Were you aware that he had a structure that he had  
01:45:10 20 built across the street from Rice Road?

01:45:12 21 A. No.

01:45:12 22 Q. Never saw that?

01:45:13 23 A. No.

01:45:13 24 Q. Never saw kids hanging around there?

01:45:15 25 A. No.

01:45:16 1 Q. When you signed that lease, you weren't -- you never  
01:45:23 2 met Walter Rice, is that fair to say?

01:45:25 3 A. No, I did meet him.

01:45:27 4 Q. Okay, but when you signed the lease did you meet  
01:45:29 5 Walter Rice?

01:45:29 6 A. No.

01:45:30 7 Q. In fact he was already in Florida, is that true?

01:45:32 8 A. Correct.

01:45:32 9 Q. So you were working particularly with Deb Vecchio,  
01:45:35 10 correct?

01:45:35 11 A. And her husband David.

01:45:36 12 Q. And she only let you sign a five-month lease in 1992  
01:45:40 13 when you first signed that lease?

01:45:41 14 A. No.

01:45:42 15 Q. I'd like to hand Exhibit 84. I'm going to hand you  
01:45:59 16 what's been marked as Exhibit 84 and ask you to take a look  
01:46:03 17 at the second page and specifically to paragraph three to  
01:46:07 18 see if that refreshes your recollection about how long that  
01:46:14 19 lease was for.

01:46:16 20 (Whereupon, there was a pause in the  
01:46:23 21 proceeding.)

01:46:23 22 A. I see where you say that's where you saw that, but  
01:46:26 23 it also says that they wish to sign a lease for another  
01:46:29 24 year so I'm assuming there should be another lease that  
01:46:32 25 they would have had.

01:46:33 1 Q. Okay, you're assuming there was another lease? Do  
01:46:35 2 you recall executing a second lease?

01:46:37 3 A. I recall signing more than one time with them.

01:46:39 4 Q. Do you have a copy of your second lease?

01:46:41 5 A. No.

01:46:43 6 Q. So that lease right there that you signed in 1992  
01:46:47 7 actually was for five months, is that fair to say?

01:46:50 8 A. Correct.

01:46:51 9 Q. All right. Now and Walter Rice was in Florida and  
01:46:54 10 he came back sometime in May, correct?

01:46:56 11 A. He came back, yes. I don't know when.

01:46:58 12 Q. Now, when Walter Rice returned from Florida, he went  
01:47:01 13 over to the trailer, true?

01:47:03 14 A. He and Joyce actually lived inside the trailer with  
01:47:07 15 us for a time.

01:47:09 16 Q. So the four of you were occupying the trailer at  
01:47:13 17 that time?

01:47:13 18 A. Yes. Very awkward.

01:47:13 19 Q. Now is it fair to state Mr. Rice expressed anger  
01:47:17 20 with the condition of the trailer when he returned from  
01:47:19 21 Florida?

01:47:19 22 A. Not that I recall.

01:47:20 23 Q. And is it -- isn't it true that Walter Rice was  
01:47:28 24 upset with the condition of the trailer and he wanted to  
01:47:31 25 evict you?

01:47:32 1 A. No.

01:47:33 2 Q. Did you ever have a conversation with Deb Vecchio  
01:47:38 3 concerning Walter Rice and his anger toward the condition  
01:47:42 4 of the trailer?

01:47:43 5 A. No, I don't recall that.

01:47:47 6 MS. PEEBLES: No further questions.

01:47:56 7 THE COURT: Thank you. Mr. Oakes?

01:48:07 8 MR. OAKES: Thank you, Your Honor.

01:48:10 9 REDIRECT EXAMINATION

01:48:10 10 BY MR. OAKES:

01:48:11 11 Q. Darcy, looking at the second page of Exhibit 84, the  
01:48:17 12 lease, on paragraph three, what does it say for the first  
01:48:22 13 sentence?

01:48:23 14 A. Tenants --

01:48:24 15 THE COURT: What page?

01:48:25 16 MR. OAKES: I'm sorry, page two designated as  
01:48:28 17 the third paragraph.

01:48:30 18 A. Says, "Tenants named herein agree to occupy trailer  
01:48:33 19 on Rice Road at least until May first. At this time, upon  
01:48:37 20 landlord's approval, if tenants wish to continue to occupy  
01:48:40 21 trailer, they will sign lease for one year."

01:48:42 22 Q. Okay, so when it says at least until May first, that  
01:48:45 23 wasn't setting an outside limit but a minimum period that  
01:48:49 24 you had to live there.

01:48:50 25 A. Correct.



01:48:58 1 Q. And turning to the first page of the exhibit where  
01:49:02 2 it says "rent," this paragraph here, can you read that  
01:49:05 3 please?

01:49:05 4 A. "Rent will be payable in full to the landlord in the  
01:49:09 5 amount of four-hundred fifty dollars per month. Tenants  
01:49:11 6 agree to pay the landlord on the first of each month. Rent  
01:49:15 7 may be increased after twelve months from the date of the  
01:49:19 8 lease. Any other pet other than fish will require an extra  
01:49:22 9 hundred dollars security deposit."

01:49:24 10 Q. The lease you have in your hand anticipated you  
01:49:27 11 could be there as long as twelve months.

01:49:28 12 A. Correct.

01:49:28 13 Q. And your recollection is that you executed other  
01:49:30 14 leases?

01:49:30 15 A. I remember signing more than one thing because we  
01:49:33 16 also added a pet at one time.

01:49:35 17 Q. So there's essentially -- was there an addendum to  
01:49:38 18 the lease then or a new lease because of the pet?

01:49:40 19 A. I don't remember.

01:49:42 20 Q. Okay, how certain are you that you lived at that  
01:49:47 21 address --

01:49:47 22 MS. PEEBLES: Objection.

01:49:49 23 THE COURT: Can I hear the question first?

01:49:51 24 Q. How certain are you that you lived at the address  
01:49:54 25 from January of 1993 to the end of 1995?

01:49:58 1 THE COURT: Don't answer that yet.

01:50:00 2 MS. PEEBLES: Bolstering.

01:50:01 3 THE COURT: I'll sustain it.

01:50:02 4 MR. OAKES: Okay, I have no further questions,

01:50:04 5 Your Honor.

01:50:04 6 MS. PEEBLES: I just have a couple quick

01:50:08 7 followups.

8 RE CROSS-EXAMINATION

9 BY MS. PEEBLES:

01:50:08 10 Q. The lease that you signed said May first and that

01:50:10 11 was because Mr. Walter Rice was returning from Florida,

01:50:13 12 fair, fair to say?

01:50:14 13 A. Yes.

01:50:15 14 Q. Okay, and now it's your testimony that the -- did

01:50:18 15 you -- did you know Walter Rice before you signed this

01:50:21 16 lease?

01:50:21 17 A. No.

01:50:21 18 Q. So it's your testimony that the four of you were

01:50:25 19 living together in the trailer after May first of 1993?

01:50:30 20 MR. OAKES: Objection, beyond the scope, Your

01:50:32 21 Honor.

01:50:32 22 MS. PEEBLES: Well --

01:50:33 23 THE COURT: No, it's fine, I'll allow it.

01:50:36 24 A. Could you repeat the question?

01:50:37 25 Q. Yeah. It's your testimony that the four of you

01:50:40 1 were -- a man you didn't know, the four of you moved in  
01:50:43 2 together in this trailer in May of 1993?

01:50:47 3 A. We didn't move in together. Can I explain?

01:50:50 4 Q. Well, you were living together.

01:50:53 5 A. At some point.

01:50:54 6 Q. You were living together?

01:50:55 7 A. They came back and we were told that they were going  
01:50:58 8 to build a place inside the garage and be living over  
01:51:01 9 there.

01:51:02 10 Q. And they moved in with you and you didn't know them.

01:51:06 11 A. Correct.

01:51:06 12 Q. And you were still paying rent while he's residing  
01:51:10 13 in there?

01:51:11 14 A. We had to pay rent, but they -- they allowed us to  
01:51:13 15 fix up things and take money, we could paint and they took  
01:51:17 16 money off rent, so I mean I don't -- it was a very awkward  
01:51:23 17 situation. We were in our twenties with no place to move  
01:51:25 18 to so we had really no choice when they moved back.

01:51:30 19 Q. And --

01:51:32 20 MS. PEEBLES: I have no further questions.

01:51:33 21 Thank you.

01:51:33 22 THE COURT: Thank you. Mr. Oakes?

01:51:41 23 MR. OAKES: No, thank you, Your Honor.

01:51:42 24 THE COURT: You can step down. Thank you.

01:51:56 25 Next witness?

01:52:00 1 MR. MOODY: People call Dale Yager.  
01:52:03 2 THE COURT: Dale Yager.  
01:52:05 3 MR. MOODY: Yager, yes.  
01:52:35 4 D A L E Y A G E R, Called as a witness, having been duly  
01:52:36 5 sworn, was examined and testified as follows:  
01:52:36 6 THE CLERK: Please state your name for the  
01:52:43 7 record.  
01:52:43 8 THE WITNESS: Dale Yager.  
01:52:44 9 THE CLERK: Spell your last name.  
01:52:47 10 THE WITNESS: Y-A-G-E-R.  
01:52:51 11 THE COURT: Mr. Yager, before Mr. Moody starts  
01:52:54 12 asking you questions, I'm going to ask you as to  
01:52:56 13 whether or not you consent to having your testimony  
01:52:57 14 audio and videotaped.  
01:52:59 15 THE WITNESS: Yes.  
01:53:02 16 THE COURT: Thank you.  
01:53:03 17 DIRECT EXAMINATION  
01:53:03 18 BY MR. MOODY:  
01:53:07 19 Q. Mr. Yager, are you currently employed?  
01:53:10 20 A. Yes, I am.  
01:53:10 21 Q. Whereabouts?  
01:53:11 22 A. In North Carolina at the Home Depot.  
01:53:14 23 Q. And how long have you been doing that?  
01:53:15 24 A. Nine years.  
01:53:16 25 Q. And prior to -- I assume you live in North Carolina

- 01:53:22 1 then if you work there.
- 01:53:22 2 A. Correct.
- 01:53:23 3 Q. How long have you lived in North Carolina?
- 01:53:25 4 A. Nine years.
- 01:53:26 5 Q. Prior to moving to North Carolina, where did you
- 01:53:28 6 work?
- 01:53:28 7 A. Central Square, New York.
- 01:53:29 8 Q. And when you lived in Central Square were you
- 01:53:32 9 employed there?
- 01:53:33 10 A. I was self-employed for five years before I moved to
- 01:53:39 11 North Carolina.
- 01:53:40 12 Q. And before you were self-employed what did you do?
- 01:53:42 13 A. I worked for the Oswego County Sheriff's Department.
- 01:53:44 14 Q. And from when to when if you remember?
- 01:53:45 15 A. From 1984 to 2002.
- 01:53:58 16 Q. And what was the highest rank you achieved?
- 01:54:00 17 A. Criminal investigator.
- 01:54:02 18 Q. And how long were you investigator for if you
- 01:54:05 19 remember?
- 01:54:05 20 A. Fourteen years.
- 01:54:07 21 Q. So back in 1994 you would have been an investigator?
- 01:54:12 22 A. That's correct.
- 01:54:13 23 Q. And at some point in time did you have some
- 01:54:16 24 involvement in the Heidi Allen investigation?
- 01:54:18 25 A. Yes, I did.

01:54:19 1 Q. I want to specifically ask you -- well, I guess  
01:54:24 2 start it this way. Do you know the date when she  
01:54:26 3 disappeared on?

01:54:26 4 A. Yes, April third, 1994.

01:54:30 5 Q. And did you become involved in the case within a  
01:54:36 6 week of that investigation or her disappearing?

01:54:40 7 A. Yes.

01:54:40 8 Q. Specifically, if you remember, where was the  
01:54:44 9 investigation located right after she disappeared?

01:54:47 10 A. In New Haven at the fire station.

01:54:52 11 Q. Sometimes called the fire barn?

01:54:56 12 A. Fire barn, yes.

01:54:58 13 Q. And when you were there, can you describe the setup,  
01:55:02 14 what was going on?

01:55:03 15 A. Actually there are a lot of different things going  
01:55:07 16 on. That's where the search was organized. Fire  
01:55:12 17 department was doing whatever support that they could do  
01:55:14 18 and we also had a space set up for orchestrating the  
01:55:19 19 investigation.

01:55:20 20 Q. Did that space that you had set up include some  
01:55:23 21 phones?

01:55:23 22 A. Yes.

01:55:23 23 Q. What was the purpose of the phones?

01:55:26 24 A. To accept any kind of tip information regarding the  
01:55:30 25 Heidi Allen case that anybody could call in.

01:55:33 1 Q. And moving now specifically to April seventh of  
01:55:38 2 1994, were you working that day?

01:55:40 3 A. Yes, I was.

01:55:40 4 Q. And if you remember, what was your assignment on  
01:55:43 5 April seven?

01:55:44 6 A. I -- I was assigned to take calls at the call  
01:55:47 7 center.

01:55:48 8 Q. In the process of taking calls what -- what would  
01:55:52 9 you do to detail the information that came in, to record  
01:55:57 10 it?

01:55:57 11 A. I would use a lead sheet and document what I was  
01:56:00 12 told over the phone for additional -- to be passed on for  
01:56:06 13 whether or not there was additional followup on it.

01:56:09 14 Q. And when you say you would document it and then pass  
01:56:18 15 it on, who would you pass it on to or how would you pass it  
01:56:22 16 on?

01:56:22 17 A. It would be to the ranks of the criminal division.  
01:56:25 18 At that time it was Lieutenant Goodsell and Investigator  
01:56:28 19 Whipple also was looking at all that documentation.

01:56:31 20 Q. I want to show you what's been marked and received  
01:56:40 21 as Defendant's Exhibit 19 and ask you if you recognize  
01:56:43 22 that.

01:56:45 23 A. Yes, I do.

01:56:57 24 Q. And what is that?

01:56:59 25 A. This is a lead sheet that I filled out apparently on

01:57:04 1 April seventh.

01:57:05 2 Q. When you -- how do you recognize that you filled it  
01:57:08 3 out?

01:57:08 4 A. It's clearly my handwriting.

01:57:11 5 Q. Does it also contain your name?

01:57:14 6 A. Yes.

01:57:14 7 Q. And did you take that information down in person or  
01:57:18 8 on the phone?

01:57:19 9 A. Over the phone.

01:57:20 10 Q. And does it indicate who the lead came from?

01:57:25 11 A. Yes. It came from a Darlene Upcraft.

01:57:29 12 Q. And are there any notes or recordings in your  
01:57:36 13 handwriting about what she told you?

01:57:38 14 A. Yes, sir.

01:57:39 15 Q. And what specifically did she tell you?

01:57:43 16 A. She advised me that she was on her way to sunrise  
01:57:48 17 service and had passed by the D & W store, had noticed that  
01:57:54 18 it was open, had a thought at that time about her son might  
01:57:59 19 want to get a soda or something on the way home, continued  
01:58:03 20 on to the sunrise service, and then after leaving there,  
01:58:07 21 having driven back by the D & W Convenience Store and  
01:58:11 22 stating that she didn't notice anything there when she came  
01:58:15 23 back through.

01:58:16 24 Q. When you say she didn't notice anything, do you  
01:58:21 25 remember what specifically you would have been or you were



01:58:23 1 talking about when she said she didn't notice, what kind of  
01:58:26 2 things you wanted her or asked her about knowing?

01:58:28 3 A. I don't recall that. I -- I know that I was paying  
01:58:33 4 attention to the timeline when she came back as to whether  
01:58:36 5 or not it had been cordoned off versus not having been  
01:58:39 6 cordoned off and whether it was prior to taking -- the  
01:58:43 7 Sheriff's Department taking possession of the building.

01:58:46 8 Q. And would it have been cordoned off before or after  
01:58:51 9 Heidi Allen disappeared?

01:58:52 10 A. After Heidi Allen disappeared.

01:58:54 11 Q. And what time did she say that she -- she went by  
01:58:57 12 the D & W on her way back from church?

01:59:00 13 MS. PEEBLES: Judge, it appears that he's  
01:59:02 14 leading the witness so perhaps he should --

01:59:05 15 THE COURT: I don't know if he's leading.

01:59:07 16 MS. PEEBLES: He's reading from a document.  
01:59:08 17 The problem is I don't know if he's reading from the  
01:59:10 18 document or his independent recollection.

01:59:12 19 THE COURT: That's -- he can't read. I don't  
01:59:15 20 think you're leading, but ask him if he has a  
01:59:16 21 recollection that needs to be refreshed or he has a --

01:59:19 22 MR. MOODY: Well, the document is in evidence  
01:59:20 23 so that's why I was -- but we can do it that way,  
01:59:23 24 that's fine. I'll take the document back.

01:59:25 25 MS. PEEBLES: I would just like to know

01:59:27 1 whether he independently recalls this. That would be  
01:59:30 2 what I'm interested in.

01:59:30 3 Q. Do you independently recall what time she told you  
01:59:33 4 she went by?

01:59:34 5 A. Again, I don't recall the specific conversation or  
01:59:40 6 whatever. My documentation shows that she had said she  
01:59:44 7 called around 7:30 or went back by about 7:35.

01:59:49 8 Q. Okay, when you say you don't recall, you've seen  
01:59:52 9 this document before?

01:59:53 10 A. That's correct.

01:59:54 11 Q. And if I were to show you the document would you --  
01:59:58 12 you said around 7:35, would refresh your recollection as to  
02:00:01 13 specifically what time?

02:00:02 14 A. As I've recalled on the document, 7:35 to 7:40 I  
02:00:08 15 think it was.

02:00:09 16 Q. Do you not remember? I'm asking you if you looked  
02:00:11 17 at the document if it would refresh your recollection.

02:00:13 18 A. I would have to look at the document.

02:00:16 19 Q. Showing you Exhibit B, I'll turn you to the second  
02:00:19 20 page, if you could look at that document yourself and see  
02:00:21 21 if that refreshes your recollection.

02:00:22 22 A. It does.

02:00:23 23 Q. And -- take it back now. What time did she tell you  
02:00:27 24 that she went by?

02:00:28 25 A. 7:31.

02:00:30 1 Q. And if you know, what time was the last sale made on  
02:00:37 2 the cash register at the D & W?

02:00:39 3 A. I believe it was 7:42.

02:00:41 4 Q. Now, she told you that she didn't see anything or  
02:00:45 5 didn't remember seeing anything you testified to, is that  
02:00:47 6 right?

02:00:47 7 A. Correct.

02:00:48 8 Q. And did you ask her or inquire if you remember  
02:00:54 9 anything about a vehicle?

02:00:56 10 A. I don't recall if I specifically asked her, but I  
02:01:01 11 did write down what she had told me that she had seen.

02:01:05 12 Q. Did she mention anything about seeing a vehicle  
02:01:08 13 either on her way to church or coming back from church?

02:01:12 14 A. No, sir.

02:01:14 15 Q. Were you specifically interested as an investigator  
02:01:18 16 about vehicles coming into and out of the D & W?

02:01:20 17 A. Yes.

02:01:21 18 Q. Do you remember if you took other leads around -- on  
02:01:25 19 April seventh that indicated vehicles either in the area or  
02:01:30 20 on the road in front of the D & W?

02:01:32 21 A. Yes, I did.

02:02:04 22 (People's Exhibit HHHH was marked for  
02:02:06 23 identification).

02:02:09 24 Q. And before we move on actually from this lead, do  
02:02:12 25 you remember whether or not Ms. Upcraft gave you any

02:02:14 1 information about anyone else who might have been -- that  
02:02:18 2 she knew that might have been on the road at the same time  
02:02:20 3 she was there?

02:02:21 4 A. Indicated that a relative of theirs, I think the  
02:02:25 5 last name is DeSharn (ph) was -- left church behind them.

02:02:31 6 Q. Okay, and did you contact these other people, I  
02:02:36 7 think you said their name was DeSharn (ph)?

02:02:39 8 A. I called the number that she had given me and I  
02:02:42 9 believe that they had no information.

02:02:43 10 Q. Now you said that you took some other leads that  
02:02:51 11 mentioned vehicles that -- that afternoon, or excuse me,  
02:02:55 12 that night?

02:02:56 13 A. That's correct.

02:02:58 14 Q. Do you remember specifically whether it was before  
02:02:59 15 or after Ms. Upcraft's lead?

02:03:02 16 A. Specifically I don't remember.

02:03:05 17 Q. I want to show you what's been marked as 4-H, and if  
02:03:11 18 I were to show you some documentation, a lead, would that  
02:03:15 19 refresh your recollection?

02:03:16 20 A. Yes.

02:03:16 21 Q. Okay, showing you what's been marked Exhibit 4-H do  
02:03:19 22 you recognize that?

02:03:20 23 A. That's also a lead that I took that same evening of  
02:03:25 24 April seventh.

02:03:26 25 Q. Okay, if you could review that and refresh your

02:03:28 1 recollection as to whether or not that refreshes your  
02:03:31 2 recollection as to whether or not you took documentation,  
02:03:34 3 or excuse me, took a lead before or after Ms. Upcraft had  
02:03:40 4 talked about a vehicle, and if you need to see Ms.  
02:03:53 5 Upcraft's lead, it's in evidence to compare.

02:04:01 6 A. Okay.

02:04:03 7 Q. Does that refresh your recollection?

02:04:06 8 A. Yes.

02:04:06 9 Q. And does this lead mention a vehicle?

02:04:09 10 A. Yes, it does.

02:04:10 11 Q. And do you remember whether or not this was before  
02:04:12 12 or after the lead you took from Ms. Upcraft?

02:04:16 13 A. The lead came in approximately eight minutes before  
02:04:20 14 the Upcraft lead.

02:04:22 15 Q. And what do you remember about that lead about a  
02:04:28 16 vehicle?

02:04:30 17 A. That person, Missy Parkhurst, had mentioned that she  
02:04:45 18 did not notice any vehicle on her way to church, had  
02:04:50 19 followed a vehicle, a car, on her way back from church that  
02:04:55 20 had turned in front of her on to 104B, but she had no  
02:05:00 21 actual description of that vehicle.

02:05:02 22 Q. The vehicle, when you say that vehicle, which one do  
02:05:05 23 you mean?

02:05:05 24 A. The car that had turned in front of her on her way  
02:05:08 25 back from church.

02:05:10 1 Q. And if you recollect, what time did Ms. Parkhurst  
02:05:15 2 say that she went by the D & W?

02:05:18 3 A. On the way?

02:05:19 4 Q. Excuse me, on the way back from.

02:05:21 5 A. On the way back.

02:05:22 6 MS. PEEBLES: Judge, I guess I'm going to  
02:05:23 7 object as to relevance, and it's eight minutes before,  
02:05:27 8 I'm not entirely --

02:05:28 9 THE COURT: I think you're trying to impeach  
02:05:31 10 Ms. Upcraft's testimony.

02:05:33 11 MR. MOODY: To an extent, Judge, and also  
02:05:35 12 their argument on Ms. Upcraft is there was some mention  
02:05:37 13 of a vehicle, and then there was a followup, and my  
02:05:39 14 argument in part is that Mr. Yager was taking  
02:05:44 15 information about vehicles if they were mentioned. Ms.  
02:05:47 16 Upcraft's lead does not mention, and certainly if she  
02:05:49 17 had mentioned it, they would have followed up on it.

02:05:51 18 THE COURT: I'll allow it, go ahead.

02:05:53 19 A. Could I hear the question again?

02:05:55 20 Q. Sure. Do you remember approximately what time Ms.  
02:05:57 21 Parkhurst said she was -- after she left church she was  
02:06:01 22 heading back to home when she passed the D & W?

02:06:05 23 A. That was about 7:35 to 7:40.

02:06:08 24 Q. To your knowledge, was any followup done on Ms.  
02:06:17 25 Upcraft?

02:06:18 1 A. That I do not know.

02:06:23 2 Q. Now you mentioned that, and I think you said this,  
02:06:45 3 but what time did Ms. Upcraft if you remember said that she  
02:06:48 4 was -- she passed the D & W on her way to church?

02:06:51 5 MS. PEEBLES: Objection. Asked and answered.

02:06:52 6 THE COURT: No, it was answered specifically  
02:06:55 7 on the way back. I don't think he ever said on the way  
02:06:57 8 to.

02:06:57 9 MS. PEEBLES: No, he said on the way because  
02:06:58 10 his testimony would make no sense. He said 7:31, and  
02:07:02 11 she didn't drive back until the tape was around the  
02:07:05 12 D & W.

02:07:07 13 THE COURT: That wasn't his testimony.

02:07:09 14 MR. MOODY: I don't believe that was her  
02:07:11 15 testimony and that was not my question.

02:07:12 16 THE COURT: Hold on. The question was asked  
02:07:15 17 what time she drove back from church, and he  
02:07:18 18 approximated it at 7:30 to -- 7:35 to 7:40, and  
02:07:23 19 specifically he said Ms. Upcraft said 7:31. That was  
02:07:27 20 the return time from church, right?

02:07:29 21 THE WITNESS: That's correct.

02:07:29 22 THE COURT: I don't recall there being a  
02:07:30 23 question as to when she went to church other than she  
02:07:33 24 was going to the sunrise service so you can answer the  
02:07:35 25 question.

02:07:35 1 THE WITNESS: I believe that was about 6:35  
02:07:42 2 a.m.

02:07:45 3 Q. And based on your knowledge of the investigation,  
02:07:48 4 would Heidi Allen have been in the store from 6:35 until  
02:07:53 5 approximately 7:31?

02:07:55 6 MS. PEEBLES: Objection, relevance.

02:07:57 7 THE COURT: I think it's very relevant. I'll  
02:07:59 8 allow it.

02:08:01 9 MS. PEEBLES: Through this witness?

02:08:01 10 THE COURT: It's his personal knowledge.

02:08:03 11 MS. PEEBLES: He doesn't even know, Judge. He  
02:08:04 12 didn't even remember anything that was talked about in  
02:08:06 13 the report till he --

02:08:07 14 THE COURT: I'll allow it. If he -- if it's  
02:08:10 15 from his memory. It's a weight, go ahead.

02:08:13 16 THE WITNESS: From information I had received  
02:08:15 17 that yes, Heidi Allen would have been in the store  
02:08:17 18 working during those times.

02:08:19 19 MS. PEEBLES: Objection, hearsay.

02:08:20 20 THE COURT: That would be sustained.

02:08:24 21 MR. MOODY: I have no further questions.

02:08:25 22 THE COURT: Can I just have a second, Ms.  
02:08:28 23 Peebles, please?

02:08:29 24 MS. PEEBLES: Sure.

02:08:29 25 (Whereupon, there was a pause in the



02:08:41 1 proceeding.)

02:08:41 2 THE COURT: Okay, Ms. Peebles.

02:08:44 3 CROSS-EXAMINATION

02:08:44 4 BY MS. PEEBLES:

02:08:45 5 Q. Now so we're clear, you have no independent  
02:08:53 6 recollection about interviewing Ms. Upcraft, is that fair?

02:08:57 7 A. I never interviewed her in person.

02:09:00 8 Q. You have no independent recollection regarding the  
02:09:03 9 lead that you took which is Defendant's Exhibit 19,  
02:09:06 10 correct?

02:09:07 11 A. I don't recall the exact content of that, correct.

02:09:10 12 Q. So essentially your testimony, when you're talking  
02:09:13 13 about when approximately she drove by and when  
02:09:16 14 approximately she was on her way to sunrise service, that's  
02:09:19 15 all just as a result of reading Defendant's Exhibit 19, is  
02:09:22 16 that fair to say?

02:09:23 17 A. The documentation that I wrote, correct.

02:09:26 18 Q. Right, correct. Now, would you agree with me that  
02:09:32 19 Defendant's Exhibit 19 essentially states that Ms. Upcraft  
02:09:37 20 didn't see anything. She doesn't mention a vehicle, no --  
02:09:40 21 nothing is contained in this document, right? Nothing was  
02:09:43 22 written down regarding any kind of a vehicle, correct?

02:09:45 23 A. That's absolutely correct.

02:09:47 24 Q. Now were you aware that sheriff's deputies contacted  
02:09:53 25 Ms. Upcraft not once but twice and went to her house to

02:09:57 1 attempt to interview her about a van?

02:09:59 2 A. I have no knowledge of that.

02:10:02 3 Q. But if this is what she saw, there would be no  
02:10:15 4 reason to visit Ms. Upcraft and interview her again a  
02:10:18 5 second time, correct?

02:10:20 6 A. That's not determined by me, that was determined by  
02:10:23 7 other people in the department.

02:10:24 8 Q. Well, if someone calls in a lead and says I drove by  
02:10:28 9 and I didn't see a thing, there would be no reason to  
02:10:31 10 follow up and do another interview would there?

02:10:33 11 MR. MOODY: Objection, Judge. I think he said  
02:10:35 12 that wasn't determined by him.

02:10:37 13 THE COURT: Sustained.

02:10:37 14 Q. Well, I'm going to hand you what's been marked as  
02:10:40 15 Defense Exhibit 19. You were an investigator at the time?

02:10:42 16 A. Yes.

02:10:43 17 Q. Okay, taking a look at what's -- the information  
02:10:45 18 contained in Defendant's Exhibit 19, as an investigator,  
02:10:49 19 would there be any reason to follow up with Ms. Upcraft if  
02:10:51 20 that's the information that she provided?

02:10:54 21 MR. MOODY: Judge, now it's speculation and  
02:10:56 22 he's -- and he said that wasn't determined by him.

02:10:59 23 MS. PEEBLES: I'm asking him in his capacity  
02:11:01 24 as an investigator.

02:11:02 25 THE COURT: But he also said he doesn't make

02:11:04 1 that call so I'll sustain the objection.

02:11:09 2 Q. So you were not aware of the fact that investigators  
02:11:15 3 went to Ms. Upcraft's house and asked her to describe the  
02:11:18 4 van she saw the morning she drove by?

02:11:21 5 MR. MOODY: Objection. Asked and answered.

02:11:23 6 THE COURT: Sustained.

02:11:29 7 Q. Now you would agree with me that the time that Ms.  
02:11:34 8 Upcraft drove by at 6:35, if in fact she saw a vehicle, a  
02:11:39 9 van, that would still be important as part of this  
02:11:41 10 investigation, true?

02:11:43 11 A. Yes.

02:11:44 12 Q. So the fact that she drove by at 6:35 and saw a van,  
02:11:48 13 that would still be important and would deserve followup,  
02:11:52 14 correct?

02:11:52 15 A. Sure.

02:11:53 16 Q. Now you -- you'll prepare a lead sheet in a case and  
02:12:09 17 a determination is made later on as to whether or not  
02:12:11 18 there's a necessity for followup, correct?

02:12:13 19 A. Correct.

02:12:14 20 Q. And all of those lead sheets had numbers associated  
02:12:18 21 with them, is that fair to say?

02:12:19 22 A. Correct.

02:12:20 23 Q. And if there was any bit of information that was  
02:12:24 24 called in and you were part of that, you were basically  
02:12:28 25 writing down on the lead sheets and then it was assigned a

02:12:31 1 number, correct?

02:12:31 2 A. Correct.

02:12:32 3 Q. And that was a good way to keep track of, you know,  
02:12:36 4 numerically so that you could follow up on things, and  
02:12:39 5 anything that was assigned a number was basically assigned  
02:12:42 6 to other investigators to follow up on, true?

02:12:45 7 MR. MOODY: Objection. The basis of  
02:12:46 8 knowledge?

02:12:47 9 THE COURT: I'm not sure I understand the  
02:12:48 10 question to be honest with you. Can you rephrase the  
02:12:50 11 question?

02:12:51 12 MS. PEEBLES: It might have been a compound  
02:12:52 13 question.

02:12:53 14 Q. I guess my -- when -- once a lead number was  
02:12:57 15 assigned to a particular lead, then that information was  
02:13:02 16 turned over and others were assigned to follow up on it, is  
02:13:07 17 that correct?

02:13:07 18 A. I believe so, yes.

02:13:07 19 Q. And anything that was deemed marginally relevant  
02:13:15 20 would be assigned a lead number, is that fair to say?

02:13:18 21 MR. MOODY: I'm going to object to marginally  
02:13:21 22 relevant. I think he said that -- I don't know that  
02:13:23 23 his -- trying to sputter. I don't know his job is to  
02:13:27 24 determine what was assigned a lead number or not.

02:13:30 25 THE COURT: I'll allow it. It's based on his

02:13:33 1 knowledge of lead sheets and lead numbers.

02:13:35 2 A. Lead sheets were evaluated for the different values  
02:13:39 3 of what is most important to least important and would be  
02:13:44 4 followed up based on that determination as a typical  
02:13:48 5 procedure, yes.

02:13:50 6 Q. And is it fair to say that there was no lead that  
02:13:56 7 was either too small or too big in a case of this  
02:13:59 8 magnitude?

02:14:00 9 A. Absolutely.

02:14:02 10 MR. MOODY: Objection. Fair to say calls for  
02:14:03 11 speculation.

02:14:04 12 THE COURT: It's within common knowledge. Go  
02:14:05 13 ahead and answer it.

02:14:07 14 THE WITNESS: Absolutely. We would follow up  
02:14:08 15 on anything.

02:14:12 16 MS. PEEBLES: No further questions. Thank  
02:14:14 17 you.

02:14:14 18 THE COURT: Mr. Moody? Redirect?

02:14:18 19 MR. MOODY: Nothing further.

02:14:20 20 THE COURT: Next witness. Do you want to take  
02:14:23 21 ten minutes? 2:15 right now.

02:14:26 22 MR. OAKES: Sure.

02:14:27 23 MS. PEEBLES: Sure.

02:14:28 24 THE COURT: How many witnesses do you have  
02:14:30 25 lined up today?

02:14:30 1 MR. OAKES: Three. I know we have Joe Lisi  
02:14:33 2 from the investigator's office, Investigator Pietrosky.  
02:14:36 3 THE COURT: So we have enough to fill the day.  
02:14:39 4 MR. OAKES: We should have.  
02:14:40 5 THE COURT: We'll be back at 2:20.  
02:24:59 6 (Whereupon, there was a recess.)  
02:25:05 7 MR. OAKES: Joseph Lisi, Your Honor.  
02:25:07 8 THE COURT: Joseph Lisi. Mr. Lisi.  
02:25:38 9 THE CLERK: Raise your right hand, left hand  
02:25:44 10 on the Bible.  
02:25:45 11 J O S E P H L I S I, Called as a witness, having been duly  
02:25:46 12 sworn, was examined and testified as follows:  
02:25:46 13 THE CLERK: Please state your name for the  
02:25:53 14 record.  
02:25:53 15 THE WITNESS: Joseph Lisi. L-I-S-I.  
02:25:56 16 THE CLERK: Thank you.  
02:25:57 17 THE COURT: Mr. Lisi, before you start  
02:25:59 18 answering any questions from Mr. Oakes, I'm going to  
02:26:01 19 ask you whether or not you consent to having your  
02:26:03 20 testimony audio and videotaped.  
02:26:05 21 THE WITNESS: I have no objections to that.  
02:26:12 22 THE COURT: Go ahead, Mr. Oakes.  
02:26:13 23 MR. OAKES: Thank you, Your Honor.  
24 DIRECT EXAMINATION  
25 BY MR. OAKES:

02:26:15 1 Q. Good afternoon, Investigator Lisi.

02:26:16 2 A. Good afternoon, Mr. Oakes.

02:26:17 3 Q. Can you please tell the Court where you're employed?

02:26:20 4 A. I'm employed by the Onondaga County Medical  
02:26:23 5 Examiner's Office as a forensic investigator.

02:26:25 6 Q. And what are your duties as a forensic investigator?

02:26:27 7 A. As a forensic investigator my duties entail  
02:26:31 8 investigating deaths whether natural, unnatural causes.

02:26:37 9 I'm actually going to scene investigations talking to law  
02:26:41 10 enforcement, talking to families and facilitating the death  
02:26:45 11 investigation.

02:26:45 12 Q. How long have you worked as a forensic investigator?

02:26:49 13 A. Since August of 2004.

02:26:51 14 Q. And have you been continuously employed in that  
02:26:55 15 position since that time?

02:26:56 16 A. Yes, I have.

02:26:57 17 Q. And is that when you joined the Onondaga County ME's  
02:27:00 18 Office?

02:27:00 19 A. No. I joined the Onondaga County ME's office in  
02:27:03 20 November of 2002 as a forensic autopsy technician.

02:27:07 21 Q. And what are your duties as a forensic autopsy?

02:27:10 22 A. As a forensic autopsy technician, my duties entail  
02:27:15 23 performing the autopsies, assisting the medical examiners  
02:27:18 24 in the autopsy room, photographing, collecting evidence,  
02:27:22 25 performing x-rays and basically facilitating the autopsies

02:27:26 1 with the physicians.

02:27:28 2 Q. And what is your educational background or training  
02:27:32 3 background that qualifies you as a forensic investigator?

02:27:36 4 A. I have a Bachelor's Degree in criminal justice and  
02:27:39 5 criminology from Le Moyne College. I'm also a board  
02:27:43 6 certified medicolegal death investigator with the American  
02:27:47 7 Board of Medicolegal Death Investigators.

02:27:50 8 Q. When you say board certified, did you have to take  
02:27:52 9 an exam to become certified?

02:27:53 10 A. Yes, I did.

02:27:54 11 Q. And when did you first become certified?

02:27:56 12 A. September of 2009.

02:27:58 13 Q. And have you been continuously certified since that  
02:28:01 14 time?

02:28:01 15 A. Yes, I have.

02:28:02 16 Q. Now does your work involve just work at the office  
02:28:08 17 or do you go outside of the office as part of your duties?

02:28:11 18 A. Both. We go to, you know, places of death,  
02:28:16 19 residences, roadsides, you know, basically wherever a death  
02:28:21 20 occurs in Onondaga County we go to. We also will at the  
02:28:26 21 request of surrounding county corners assist them with  
02:28:30 22 their death investigations and go out to those scenes as  
02:28:34 23 well.

02:28:34 24 Q. And Investigator Lisi, if I use the term a forensic  
02:28:39 25 excavation, does that have particular meaning in your



02:28:41 1 field?

02:28:42 2 A. Yes, it does.

02:28:42 3 Q. And can you describe for the Court what that meaning  
02:28:45 4 is?

02:28:45 5 A. A forensic excavation basically entails the  
02:28:48 6 investigators and the medical examiners going to a  
02:28:53 7 location, setting up a grid, and basically slowly,  
02:28:59 8 meticulously removing layers of soil to possibly uncover,  
02:29:05 9 you know, evidence of human remains.

02:29:07 10 Q. And could you please describe for the Court your  
02:29:10 11 training or experience regarding forensic investigations?

02:29:14 12 A. Yes. Basically a lot of the training comes on the  
02:29:20 13 job. It's by senior investigators at the office as well as  
02:29:24 14 the medical examiners that give us that training and as far  
02:29:29 15 as excavations or in death investigations.

02:29:33 16 Q. And as you sit here today, can you approximate for  
02:29:37 17 the Court how many forensic investigations you have been a  
02:29:40 18 part of or you've attended?

02:29:41 19 A. Forensic investigations --

02:29:45 20 Q. Forensic excavations, I apologize.

02:29:48 21 A. Excavations.

02:29:49 22 THE COURT: Hold on, hold on. The question is  
02:29:51 23 how many forensic excavations?

02:29:53 24 MR. OAKES: Excavations, correct. If I  
02:29:54 25 misspoke I apologize.

02:29:56 1 A. Five.

02:29:57 2 Q. And were you working on the day of July twenty-ninth  
02:30:03 3 of 2014?

02:30:04 4 A. Yes, I was.

02:30:06 5 Q. And were you working with anybody on that day?

02:30:08 6 A. Yes. I was working with five members of our office  
02:30:13 7 as well as members of the Sheriff's Department.

02:30:18 8 Q. And when you say --

02:30:20 9 A. Oswego County Sheriff's Department.

02:30:22 10 Q. Thank you. Which members of the Medical Examiner's  
02:30:23 11 Office?

02:30:23 12 A. There was our deputy chief medical examiner Laura  
02:30:28 13 Knight, there was our medical examiner Julia Shields, there  
02:30:32 14 was myself, and there was a resident from Upstate Hospital  
02:30:38 15 who was rotating through our office. There was a medical  
02:30:41 16 student from Upstate Hospital that was also there as well  
02:30:46 17 as a Medical Examiner's Office intern.

02:30:49 18 Q. And you said that you were assisting Oswego County  
02:30:52 19 Sheriff's Department on that day. At what location?

02:30:55 20 A. Rice Road location where the reported abandoned  
02:31:01 21 cabin had been located.

02:31:02 22 Q. And by way of background and foundation, why -- what  
02:31:06 23 was your understanding of why you were going to that  
02:31:08 24 location?

02:31:08 25 A. We were sent to that location based on a state --

02:31:12 1 New York State Trooper cadaver dog that hit on a location  
02:31:16 2 there for possible human remains.

02:31:20 3 Q. So when you went to that location, did you go to a  
02:31:23 4 particular area?

02:31:24 5 A. Yes. We were directed to a cabin site, you know,  
02:31:30 6 approximately one to two-hundred yards from a residence on  
02:31:33 7 Rice Road, and that had been the point where the cadaver  
02:31:41 8 dog had hit, had been previously staked, and that's where  
02:31:44 9 we were directed to.

02:31:46 10 Q. And Investigator Lisi, when you say cabin site, was  
02:31:49 11 there a standing structure when you --

02:31:51 12 A. No, there was not.

02:31:52 13 Q. And generally could you describe for the Court the  
02:31:55 14 area where generally where the search was being performed?

02:31:58 15 A. It was a heavily wooded area, and there, you know,  
02:32:02 16 appeared to be debris possibly from the cabin that had  
02:32:07 17 collapsed and, you know, a lot of the ground was overgrown  
02:32:10 18 with vegetation and, you know, obviously there was trees,  
02:32:15 19 you know, surrounding this area.

02:32:17 20 Q. Okay, and how did -- how did you make entry to that  
02:32:21 21 point in the woods?

02:32:22 22 A. We were escorted on foot through various paths in  
02:32:27 23 the woods.

02:32:28 24 Q. And at any point did you cross railroad tracks on  
02:32:33 25 the way to get to that site?

02:32:34 1 A. No, I did not.

02:32:35 2 Q. Did you go through an open field to get to that  
02:32:38 3 site?

02:32:38 4 A. No, I did not.

02:32:40 5 Q. And you said you focussed initially on an area where  
02:32:43 6 the dog had indicated your -- your understanding was the  
02:32:46 7 day before?

02:32:46 8 A. Yes, that is correct.

02:32:48 9 Q. And was there a procedure set up to -- for an  
02:32:51 10 excavation of that area surrounding where the K-9 had hit?

02:32:56 11 A. Basically at that point once we saw the area we set  
02:32:59 12 up a stringed pattern around, centered around the point  
02:33:06 13 where the dog hit, and this area went from anywhere from  
02:33:10 14 ten feet to seven feet depending on the site of this area  
02:33:16 15 because of the vegetation as well as the trees and natural  
02:33:19 16 structures that were present.

02:33:28 17 Q. Investigator Lisi, I'm going to hand you what's been  
02:33:36 18 received as People's Exhibit S. Do you recognize what's  
02:33:40 19 shown in that photograph?

02:33:41 20 A. Yes, I do.

02:33:42 21 Q. Could you please tell the Court?

02:33:43 22 A. This is the area on July twenty-ninth that we  
02:33:48 23 forensic excavated.

02:33:50 24 Q. And does that photograph fairly and accurately show  
02:33:54 25 the condition of the ground right after you staked it off?

02:33:58 1 A. Yes, it does.

02:33:59 2 Q. Okay. And so in looking at this photograph, and  
02:34:04 3 based upon your recollection, the area where that marker  
02:34:07 4 was that you first started digging, was that ground turned  
02:34:11 5 up or dug up?

02:34:13 6 A. It did not appear so.

02:34:16 7 Q. Can you please describe for the Court the  
02:34:18 8 methodology -- well, let me ask you who established the  
02:34:22 9 methodology for how the excavation would be conducted?

02:34:24 10 A. That was established by the deputy chief medical  
02:34:27 11 examiner Laura Knight who was present on the scene.

02:34:30 12 Q. And were her recommendations followed?

02:34:35 13 A. Yes, they were.

02:34:35 14 Q. Her methodology followed?

02:34:37 15 A. Yes, it was.

02:34:39 16 Q. And what was that methodology?

02:34:40 17 A. We decided that we were going to basically grid off  
02:34:44 18 that area into four quadrants, and the dirt from those four  
02:34:50 19 quadrants would then be moved to four separate stations  
02:34:54 20 that corresponded with the site of the quadrant, the dig,  
02:34:57 21 and that ground and soil and, you know, vegetation all  
02:35:01 22 would be sifted at this time by staff from the Medical  
02:35:07 23 Examiner's Office.

02:35:08 24 Q. Okay, and when you talk about the four separate  
02:35:11 25 stations and sifting, can you describe that process for the

02:35:13 1 Court?

02:35:13 2 A. Yep. The deputies would recover buckets of dirt  
02:35:20 3 from the specific quadrant, bring it over to the sifting  
02:35:24 4 station. At that point the medical examiner staff would  
02:35:27 5 take possession of the bucket, pour it over our screen  
02:35:32 6 sifters and we would meticulously go through the dirt,  
02:35:36 7 pushing it through the sifters, looking for any signs of  
02:35:39 8 evidence or remains or anything that might be present.

02:35:41 9 Q. And what is the significance of those sifters,  
02:35:45 10 what's the reason for using the sifters?

02:35:47 11 A. The sifters are basically a twenty-four inch square  
02:35:50 12 that has a quarter of an inch mesh screen and basically  
02:35:56 13 that is to catch any -- the smallest possible human remains  
02:36:00 14 or evidence that might be present.

02:36:02 15 Q. And have you used that type of sifter on other  
02:36:05 16 excavations?

02:36:06 17 A. Yes, I have.

02:36:08 18 Q. And have you ever been personally present when  
02:36:10 19 remains have been found, bone fragments or teeth or  
02:36:15 20 anything like that?

02:36:15 21 A. No, I have not.

02:36:16 22 Q. Now you said the area was assigned into four  
02:36:21 23 quadrants. Were each of those quadrants essentially  
02:36:24 24 assigned to a sifting station?

02:36:27 25 A. Yes, they were.

02:36:28 1 Q. And that methodology was used -- well, how long did  
02:36:33 2 the dig last for on July twenty-ninth?

02:36:35 3 A. It lasted all day. It started just before nine  
02:36:38 4 o'clock in the morning and went till just before four  
02:36:41 5 o'clock in the afternoon.

02:36:43 6 Q. And throughout that day was the methodology you  
02:36:46 7 described used?

02:36:47 8 A. Yes, it was.

02:36:48 9 Q. And were you consistently or constantly present  
02:36:52 10 throughout the day?

02:36:53 11 A. Yes, I was.

02:36:54 12 Q. Could you personally observe what the deputies were  
02:36:58 13 doing in digging up that area?

02:36:59 14 A. Yes, I did.

02:37:01 15 Q. Do you have an opinion were they following the  
02:37:03 16 methodology that was established by Dr. Knight?

02:37:05 17 A. Yes, they were.

02:37:06 18 Q. And you said you could see as they were digging.

02:37:12 19 Could you describe the terrain as they were digging?

02:37:16 20 MS. BIANCO: Objection to the "they." We  
02:37:17 21 don't know how many, where.

02:37:19 22 THE COURT: Yes. Give me some -- I'm assuming  
02:37:22 23 the deputies.

02:37:23 24 Q. The deputies were digging?

02:37:25 25 A. Yes.

02:37:26 1 MS. BIANCO: Well, how many deputies are we  
02:37:28 2 talking about? Is there one? Is there ten?

02:37:30 3 THE COURT: Ask how many deputies.

02:37:31 4 Q. How many deputies approximately were there?

02:37:35 5 A. At least six to eight deputies.

02:37:38 6 Q. Okay, and the persons who were digging, the  
02:37:40 7 deputies.

02:37:41 8 A. Yes.

02:37:41 9 Q. Could you see the terrain that they were digging in?

02:37:44 10 A. Yes.

02:37:44 11 Q. And how would you describe that terrain?

02:37:46 12 A. It was dirt, consisting of dirt, rock, tree roots.

02:37:53 13 Q. And I'd like to focus on the tree roots for a

02:37:57 14 moment. What kind of obstacle if any did the tree roots  
02:38:01 15 pose in digging?

02:38:02 16 A. They -- we weren't able to properly dig in those  
02:38:06 17 areas until we actually removed the tree roots.

02:38:09 18 Q. Would you say it was difficult to dig there because  
02:38:11 19 of the tree roots?

02:38:12 20 A. Yes.

02:38:13 21 Q. And at the end of the day, do you know what the  
02:38:21 22 depth was that was dug to you at that first site?

02:38:25 23 A. Twenty-nine inches.

02:38:27 24 Q. Who made the determination to dig to twenty-nine  
02:38:29 25 inches or how was that established?



02:38:31 1 A. We dug to twenty-nine inches based on that at  
02:38:34 2 twenty-nine inches there was a hard packed level or layer  
02:38:38 3 of clay that was undisturbed across the -- across the  
02:38:46 4 entire area.

02:38:48 5 Q. And when you say undisturbed, can you describe that  
02:38:51 6 more what you mean by that?

02:38:53 7 A. Basically at twenty-nine inches, this layer of clay  
02:38:57 8 being directly, you know, over the entirety of the  
02:39:01 9 excavation site, did not show any signs that it was  
02:39:05 10 disturbed.

02:39:07 11 Q. And so based on that appearance, what conclusion did  
02:39:10 12 you draw?

02:39:10 13 A. That there was nothing further to be done by digging  
02:39:15 14 below this area at this point because this was basically a  
02:39:20 15 sterile grown that was untouched.

02:39:58 16 MR. OAKES: Your Honor, may I approach?

02:40:00 17 THE COURT: Absolutely.

02:40:00 18 Q. Investigator Lisi, I'm going to hand you what's been  
02:40:07 19 marked for -- I'm sorry, what's been received into evidence  
02:40:09 20 as People's Exhibit T, R, Q, P and EE. Can you take a look  
02:40:21 21 at those please?

02:40:43 22 (Whereupon, there was a pause in the  
02:40:45 23 proceeding.)

02:40:45 24 Q. And Investigator Lisi, I'm going to hand you Exhibit  
02:40:55 25 T to begin with. Can you tell the Court what's shown in

02:40:57 1 that photograph?

02:40:58 2 A. This is showing prior to any of our digging we have  
02:41:02 3 placed the evidence marker showing the central point where  
02:41:06 4 we were going to where the cadaver dog had hit on a  
02:41:10 5 possible location. It's also showing our compass in front  
02:41:14 6 of the evidence marker basically showing us that north,  
02:41:17 7 where the north side of the excavation site was positioned.

02:41:23 8 Q. And I'm going to hand you what's been received  
02:41:25 9 Exhibit R. What's shown in this photograph?

02:41:30 10 A. Again, this is the excavation area with the evidence  
02:41:36 11 marker showing the point where the cadaver dog had shown  
02:41:39 12 interest.

02:41:40 13 Q. And Investigator Lisi, for clarification on that  
02:41:43 14 photograph, the red string isn't up yet, correct?

02:41:46 15 A. No, it is not.

02:41:48 16 Q. I'm next going to hand you what's been received as  
02:41:52 17 Exhibit P and what's shown here?

02:41:55 18 A. We have started excavating the area at this point  
02:42:01 19 and showing, you know, that some tree roots have already  
02:42:05 20 been exposed and also some of the vegetation that's been  
02:42:11 21 exposed as well.

02:42:12 22 Q. And last, EE, what's shown in that?

02:42:19 23 A. This is again showing the excavation area. This is  
02:42:26 24 before we've gotten to the clay area so it's probably about  
02:42:30 25 halfway into our excavation.

02:42:33 1 Q. And Investigator Lisi, some of the root structures  
02:42:37 2 that you have described.

02:42:38 3 A. Yes.

02:42:38 4 Q. Are those shown in this photograph?

02:42:41 5 A. Yes, they are.

02:42:42 6 Q. Actually I'm going to hold back on Exhibit Q.  
02:42:56 7 Investigator Lisi, could you remind me please what time  
02:42:59 8 approximately did you stop digging on Tuesday, July  
02:43:01 9 twenty-ninth, 2014?

02:43:03 10 A. It was a little before four o'clock in the  
02:43:06 11 afternoon.

02:43:06 12 Q. Did you return the next day?

02:43:09 13 A. Yes, I did.

02:43:10 14 Q. What was happening the next day?

02:43:13 15 A. The next day we were going to finish sifting the  
02:43:18 16 area from the first day, and then we were also instructed  
02:43:23 17 to excavate the area underneath the footprint of what  
02:43:28 18 appeared to be a cabin.

02:43:30 19 Q. Okay, and I'd like to talk a little bit about that  
02:43:33 20 footprint or you said what appeared to be a cabin. What  
02:43:36 21 did you see at that location in that area?

02:43:39 22 A. There was various amounts of wood, debris and some  
02:43:46 23 household -- there was a household appliance, I believe  
02:43:51 24 there was a refrigerator, freezer, and just as well as some  
02:43:57 25 various household things.

02:43:59 1 Q. Were those items removed before the excavation could  
02:44:04 2 occur?

02:44:04 3 A. Yes, they were.

02:44:05 4 Q. And an excavation -- well, and on the second day  
02:44:10 5 what area was the excavation performed on?

02:44:12 6 A. It was finished on the area where the cadaver dog  
02:44:17 7 had hit, and then we moved to the area of the footprint of  
02:44:21 8 the -- what appeared to be possibly a cabin or something,  
02:44:25 9 structure.

02:44:25 10 Q. Okay, and for that structure, can you approximate  
02:44:28 11 for the Court roughly the dimensions of the footprint as  
02:44:32 12 you recall?

02:44:33 13 A. I would have to approximate it at roughly maybe  
02:44:39 14 about a ten by fifteen area.

02:44:41 15 Q. And that's your best recollection?

02:44:43 16 A. Yes.

02:44:44 17 Q. As you sit here today. What was the methodology  
02:44:47 18 used on the second day?

02:44:48 19 A. The same methodology that was used on the first day.

02:44:52 20 Q. Okay, and how long did the excavation occur on the  
02:44:57 21 second day?

02:44:58 22 A. It occurred on basically the same amount of time.  
02:45:01 23 We finished up shortly before four o'clock that day.

02:45:05 24 Q. And was anything of interest noted or detected  
02:45:09 25 during the second day?

02:45:10 1 A. There was not.

02:45:11 2 Q. And I'm not sure if I asked you that question  
02:45:13 3 regarding the first day. Was anything of interest noted on  
02:45:16 4 the first day on July twenty-ninth?

02:45:18 5 A. No, there was not.

02:45:19 6 Q. Okay. And on the second day, on the July thirtieth,  
02:45:24 7 approximately what depth was dug to?

02:45:26 8 A. We also dug to twenty-nine inches.

02:45:30 9 Q. Why did you -- why that depth?

02:45:32 10 A. Again, at twenty-nine inches we came across a hard  
02:45:37 11 pack layer of clay that appeared undisturbed across the  
02:45:40 12 entirety of that site as well.

02:45:43 13 Q. And generally what was the ground structure where  
02:45:49 14 you were digging on the second day?

02:45:50 15 A. It was similar to the first day. Again, vegetation,  
02:45:55 16 root structures and dirt.

02:45:58 17 Q. If you recall, were more than one shovel broken  
02:46:02 18 during the dig?

02:46:03 19 A. Yes, there was.

02:46:05 20 Q. And perhaps some other tools too?

02:46:08 21 A. Yes, there was.

02:46:09 22 Q. And Investigator Lisi, I'm going to hand you what's  
02:46:42 23 been received as People's Exhibit HH. Do you recognize  
02:46:45 24 what's shown in that photograph?

02:46:46 25 A. Yes. This is the area underneath the footprint of

02:46:52 1 the structure.

02:46:52 2 Q. And the area that was dug in, was that surrounded by  
02:46:59 3 red string, that photograph?

02:47:01 4 A. Yes, it was.

02:47:02 5 Q. I'm going to hand you what's received as People's  
02:47:04 6 FF. What's shown there?

02:47:05 7 A. This is again showing the string as well as the  
02:47:09 8 twenty-nine inches with the tape measure, and again, this  
02:47:12 9 is the footprint of the structure.

02:47:15 10 Q. Now, the edges of those two areas where you were  
02:47:19 11 digging, did they line up? Were they immediately adjacent  
02:47:22 12 to each other if you recall?

02:47:25 13 A. The -- I'm sorry, which two areas?

02:47:28 14 Q. I'm sorry. The area where you were digging on the  
02:47:31 15 first day.

02:47:31 16 A. Okay.

02:47:32 17 Q. Focussed on where the dog had hit, and then on the  
02:47:35 18 second day the footprint, how close in proximity were those  
02:47:38 19 two areas?

02:47:39 20 A. They were adjacent to each other.

02:47:40 21 Q. Okay, and at the end of the first day when you dug  
02:47:47 22 down, was the pit filled back in or was it left open?

02:47:50 23 A. On the first day it was left open.

02:47:52 24 Q. On the second day of the dig eventually were the two  
02:47:56 25 pits joined into one big area?

02:47:58 1 A. Yes, they were.

02:47:59 2 Q. And what was the purpose of essentially connecting  
02:48:02 3 those two areas?

02:48:03 4 A. To show that the -- basically that at twenty-nine  
02:48:08 5 inches the hard pack clay went across the entirety of this  
02:48:11 6 area.

02:48:12 7 Q. Okay, I'm going to hand you what's been received as  
02:48:15 8 People's Exhibit JJ and what's shown in that photograph?

02:48:19 9 A. This is -- this is actually the area on the -- dug  
02:48:30 10 from the first day.

02:48:31 11 Q. Okay, is it just that or is it basically a  
02:48:36 12 connection of the two if you can see?

02:48:38 13 A. Yes. Actually it is a connection of the two because  
02:48:41 14 this was the tarp there from the second day.

02:48:44 15 Q. Okay.

02:49:07 16 THE COURT: Is that last Exhibit JJ?

02:49:10 17 MR. OAKES: It was JJ, Your Honor.

02:49:11 18 THE COURT: Thank you.

02:49:19 19 Q. Investigator Lisi, prior to this dig on July  
02:49:23 20 twenty-ninth and July thirtieth, had you ever responded to  
02:49:26 21 a location for a forensic excavation where a K-9 had been  
02:49:31 22 employed or used?

02:49:32 23 A. Yes, I have.

02:49:33 24 Q. How many occasions prior to this dig?

02:49:36 25 A. There were two separate occasions prior to that dig.

02:49:40 1 Q. And do you recall approximately when those were?

02:49:44 2 A. I believe they were in 2010.

02:49:48 3 Q. And do you generally remember the areas where those  
02:49:50 4 were?

02:49:51 5 A. Yes, I do.

02:49:52 6 Q. Where were they?

02:49:53 7 A. The first site was in the -- I believe it was in the  
02:49:57 8 Town of Scriba.

02:49:59 9 Q. Here in Oswego County?

02:50:00 10 A. In Oswego County, and the second area, I'm not sure  
02:50:04 11 if it was actually still in the town of -- in Scriba, but  
02:50:07 12 it was just up the road on 104.

02:50:10 13 Q. And on those prior occasions, you went because a K-9  
02:50:15 14 had hit at those locations?

02:50:17 15 A. Yes.

02:50:17 16 Q. And on those two dates, did you or any members of  
02:50:21 17 the ME's Office find any human remains at those sites?

02:50:25 18 A. No, we did not.

02:50:34 19 MR. OAKES: No further questions, Your Honor.

02:50:36 20 THE COURT: Ms. Bianco.

02:50:37 21 MS. BIANCO: Thank you, Judge.

02:50:38 22 CROSS-EXAMINATION

02:50:39 23 BY MS. BIANCO:

02:50:40 24 Q. Investigator Lisi, when you went to the Rice Road  
02:51:04 25 area and reviewed the scene, did you also notice that there



02:51:09 1 was a creek running next to it?

02:51:11 2 A. I believe there was a creek, yes.

02:51:13 3 Q. Okay, and do you know whether or not that creek ever  
02:51:20 4 overflowed the area where there was a dig in the past  
02:51:23 5 twenty years? Do you know?

02:51:25 6 A. I do not know.

02:51:26 7 Q. Okay, would you agree that the terrain in that area  
02:51:29 8 could change dramatically in the twenty-year period,  
02:51:33 9 correct?

02:51:33 10 A. It's possible.

02:51:34 11 MR. OAKES: Objection. Objection as to  
02:51:36 12 foundation. I don't think this witness is qualified as  
02:51:39 13 a geologist to testify about terrain.

02:51:41 14 THE COURT: He answered of his own knowledge.  
02:51:43 15 I'll allow it.

02:51:44 16 Q. Well, let's talk about your -- your actual training  
02:51:48 17 in forensic excavations. Did you take specific classes on  
02:51:52 18 forensic excavations?

02:51:54 19 A. No, I did not.

02:51:55 20 Q. Okay, so there's no particular certification for  
02:51:59 21 forensic excavations, is that correct?

02:52:01 22 A. Correct.

02:52:02 23 Q. This was just on-the-job training?

02:52:05 24 A. Correct.

02:52:05 25 Q. Okay. In the two digs that you -- you talked about

02:52:10 1 that you did before which I believe you said were in

02:52:14 2 Scriba, is that right?

02:52:14 3 A. Correct.

02:52:15 4 Q. During those digs, did you take any forensic soil  
02:52:20 5 samples?

02:52:20 6 A. No.

02:52:21 7 Q. Now, you said that in this particular area where the  
02:52:27 8 dig was occurring there were a number of trees there that  
02:52:32 9 were very difficult to cut through. Is that right?

02:52:33 10 A. Correct.

02:52:34 11 Q. Do you know how long those trees had been there?

02:52:38 12 A. No, I do not.

02:52:39 13 Q. So is it fair to say that you don't know if this  
02:52:43 14 terrain with the trees would be similar twenty years ago as  
02:52:46 15 it was the day you did the dig?

02:52:48 16 A. No, I do not.

02:52:49 17 Q. I believe you testified on direct examination that  
02:52:56 18 when you did this dig you set up a grid and you slowly and  
02:53:02 19 meticulously reviewed the layers of soil, is that right?

02:53:06 20 A. Yes.

02:53:06 21 Q. Well, the people who were actually doing the digging  
02:53:10 22 were the sheriffs, correct?

02:53:11 23 A. Correct.

02:53:12 24 Q. Did anybody -- did you train the sheriffs as to how  
02:53:14 25 to do the dig?

02:53:15 1 A. No, we did not.

02:53:16 2 Q. So they just went out there with shovels and started  
02:53:19 3 digging, correct?

02:53:20 4 A. Yeah, under our supervision.

02:53:22 5 Q. And when they're digging, sometimes they're breaking  
02:53:25 6 up the trees, correct?

02:53:26 7 A. Correct.

02:53:27 8 Q. Breaking their shovels in half.

02:53:29 9 A. Correct.

02:53:30 10 Q. So this isn't a dig where they're doing things  
02:53:33 11 gently and picking up layer by layer meticulously, is that  
02:53:37 12 right?

02:53:37 13 A. They were not doing layer -- we were doing layer by  
02:53:40 14 layer with the shovels.

02:53:42 15 Q. Okay, but when they're digging, they're digging into  
02:53:45 16 the ground, sometimes the shovel would break, correct?

02:53:48 17 A. Correct.

02:53:49 18 Q. Okay, and when you're digging layer by layer, how  
02:53:52 19 many inches are you supposed to dig down at a time?

02:53:55 20 A. There's really no set, you know, inches.

02:54:00 21 Q. Okay, so some -- some -- you said there were between  
02:54:02 22 six and eight sheriffs, correct?

02:54:04 23 A. Correct.

02:54:04 24 Q. So some of them could be digging down a foot with  
02:54:07 25 their shovel, correct?

02:54:09 1 A. That's probably rather unlikely.

02:54:11 2 Q. Okay, do you know?

02:54:14 3 A. No. I'm just going based upon the size of the  
02:54:16 4 shovel that most likely a foot would have been a tough dig  
02:54:19 5 with that.

02:54:20 6 Q. Would you agree that some of the sheriffs might have  
02:54:22 7 been digging a couple of inches and some of the sheriffs  
02:54:25 8 might have been digging eight inches at a time?

02:54:27 9 A. It's possible.

02:54:27 10 Q. So this layer by layer dig, it -- it really wasn't  
02:54:32 11 consistent between all the sheriffs doing the digging,  
02:54:35 12 correct?

02:54:35 13 A. Correct.

02:54:35 14 Q. And would you agree it's very difficult to find  
02:54:41 15 pieces of human remains after twenty years, would you agree  
02:54:46 16 with that?

02:54:47 17 A. It's possible, but there should still be some  
02:54:52 18 remnants behind.

02:54:52 19 Q. It depends on decomposition, correct?

02:54:55 20 A. Correct.

02:54:57 21 Q. So if the water from the creek had rolled over that  
02:54:59 22 particular area, some of those remains might have been  
02:55:02 23 pushed away, correct?

02:55:03 24 MR. OAKES: Objection, Your Honor. Calls for  
02:55:05 25 a whole lot of speculation.

02:55:06 1 THE COURT: Sustained.

02:55:07 2 Q. The area where the dog hit in particular, did you  
02:55:18 3 take a soil sample from that particular area to determine  
02:55:22 4 if there were any indication that there were chemical  
02:55:26 5 traces of human remains?

02:55:27 6 A. No, we did not.

02:55:37 7 MS. BIANCO: If I may have a moment, Your  
02:55:39 8 Honor.

02:55:39 9 THE COURT: Sure.

02:55:40 10 (Whereupon, there was a pause in the  
02:55:56 11 proceeding.)

02:55:56 12 Q. Would you agree that decomposition of remains could  
02:56:04 13 cause, well, wind, water could cause remains to travel or  
02:56:12 14 move in an area, would you agree with that?

02:56:14 15 A. Yes.

02:56:14 16 Q. Okay, so the remains could be on one spot but also  
02:56:18 17 could be on several spots, correct?

02:56:19 18 A. Correct.

02:56:20 19 Q. Did you do any digging underneath the actual cabin  
02:56:24 20 itself?

02:56:25 21 A. Yes.

02:56:26 22 Q. Okay, and in the actual cabin itself, did you pick  
02:56:29 23 up all of the layers of the cabin?

02:56:31 24 A. Yes.

02:56:32 25 Q. Okay, and you dug to twenty-nine inches?

02:56:34 1 A. That is correct.

02:56:35 2 Q. Is it fair to say that there could have been human  
02:56:38 3 remains there at one point but they were removed before you  
02:56:40 4 got there?

02:56:42 5 MR. OAKES: Objection, speculation.

02:56:45 6 THE COURT: What's the basis for that?

02:56:47 7 MS. BIANCO: Well, does he know whether -- if  
02:56:51 8 human remains were at one point there and then moved,  
02:56:53 9 would you necessarily be able to find any evidence of  
02:56:56 10 them.

02:56:58 11 THE COURT: It that a general question or --

02:57:01 12 MS. BIANCO: General question.

02:57:01 13 THE COURT: Okay.

02:57:02 14 THE WITNESS: Most likely no.

02:57:04 15 MS. BIANCO: Thank you. No further questions.

02:57:07 16 THE COURT: Mr. Oakes?

17 MR. OAKES: Thank you.

02:57:13 18 REDIRECT EXAMINATION

02:57:14 19 BY MR. OAKES:

02:57:15 20 Q. Investigator Lisi, you said that Dr. Knight was  
02:57:33 21 there on the first day?

02:57:34 22 A. Correct.

02:57:35 23 Q. Tuesday, July twenty-ninth? She established the  
02:57:38 24 protocol, procedure for the dig?

02:57:39 25 A. Yes, she did.

02:57:40 1 Q. And was it consistent with other digs that had been  
02:57:43 2 performed?

02:57:44 3 A. Yes, they were.

02:57:45 4 Q. And counsel asked whether the sheriff's deputies  
02:57:51 5 were trained specifically how to do the dig. Were the  
02:57:56 6 deputies within the eyesight of Dr. Knight and the staff of  
02:58:00 7 the ME's Office?

02:58:01 8 MS. BIANCO: Objection to what Dr. Knight can  
02:58:03 9 see. How does this witness know?

02:58:05 10 THE COURT: I guess if you ask how close Dr.  
02:58:07 11 Knight was.

02:58:07 12 Q. How close was Dr. Knight to where this dig was  
02:58:10 13 occurring where the deputies were digging?

02:58:12 14 A. Within ten feet.

02:58:14 15 Q. And could you see what the deputies were doing?

02:58:16 16 A. Yes.

02:58:17 17 Q. And at any point did Dr. Knight tell them they were  
02:58:20 18 doing it wrong?

02:58:20 19 A. No.

02:58:21 20 Q. Did she instruct them to do it differently?

02:58:23 21 A. No.

02:58:23 22 Q. Did it conform with how the staff of the ME's office  
02:58:27 23 wanted it performed?

02:58:28 24 A. Yes.

02:58:30 25 Q. And staff from the Medical Examiner's Office were

02:58:37 1 there continuously on both days?

02:58:38 2 A. Yes.

02:58:38 3 Q. At all times digging was being done?

02:58:41 4 A. Yes.

02:58:42 5 Q. Now, counsel asked whether human bodies  
02:58:48 6 disintegrate. They do decompose, correct?

02:58:50 7 A. Yes, they do.

02:58:51 8 MS. BIANCO: Objection to the leading nature  
02:58:53 9 of all his questions Judge.

02:58:54 10 THE COURT: This sounds like foundational  
02:58:56 11 question. I'm fine with it. Go ahead.

02:58:58 12 Q. What about bones, can you please describe again I  
02:59:03 13 think counsel used the term disintegration. Could you  
02:59:06 14 please describe how bones disintegrate or whether they  
02:59:11 15 disintegrate?

02:59:11 16 A. They weather. Obviously the biggest part to human  
02:59:16 17 remains and bones are animal activity, they break the bones  
02:59:20 18 down. Basically they disintegrate over time.

02:59:23 19 Q. What about teeth?

02:59:26 20 A. Teeth --

02:59:29 21 MS. BIANCO: Objection to the foundation of  
02:59:31 22 him being able to answer this question. We don't know  
02:59:33 23 if he has any training about the disintegration of  
02:59:37 24 teeth.

02:59:38 25 MR. OAKES: Counsel asked some questions



02:59:42 1 about bodies --

02:59:42 2 MS. BIANCO: Bodies, not teeth.

02:59:42 3 MR. OAKES: Well, you asked about bodies.

02:59:43 4 Teeth are part of bodies last time I knew.

02:59:45 5 Q. What about teeth?

02:59:46 6 THE COURT: I'll allow it.

02:59:47 7 A. Teeth degrade a lot slower process than bone  
02:59:51 8 structure.

02:59:52 9 Q. Would you expect -- again, would teeth completely  
02:59:55 10 disintegrate after a twenty-year period?

02:59:58 11 MS. BIANCO: Objection. He's still leading  
02:59:59 12 the witness, Judge.

03:00:00 13 THE COURT: It's a leading question.

03:00:01 14 Sustained.

03:00:01 15 Q. What condition would teeth be in after twenty years?

03:00:05 16 A. I would expect to find them.

03:00:07 17 Q. And is that the purpose of doing the sifting?

03:00:13 18 A. Yes.

03:00:13 19 Q. And again, following along counsel's questions about  
03:00:19 20 disintegration, would that disintegration, what role does  
03:00:24 21 that play in using the screens or the size of the screens  
03:00:27 22 that the ME's office uses?

03:00:28 23 A. That they're basically it's small enough to catch,  
03:00:32 24 you know, portions of teeth or small portions of bone.

03:00:35 25 Q. And what -- what type of bone or teeth did you see

03:00:40 1 on July twenty-ninth or July thirtieth?

03:00:42 2 A. I didn't see any.

03:00:45 3 MR. OAKES: Thank you, investigator.

03:00:46 4 THE COURT: Ms. Bianco

03:00:48 5 MS. BIANCO: Yes, please, Judge.

03:00:57 6 RE CROSS-EXAMINATION

03:00:58 7 BY MS. BIANCO:

03:01:03 8 Q. The methodology you were using on the forensic  
03:01:28 9 investigation on the day of the dig we're talking about  
03:01:32 10 today, was that the same forensic methodology you used on  
03:01:36 11 the prior two digs?

03:01:38 12 A. Yes.

03:01:39 13 Q. And you have never been successful on your digs in  
03:01:43 14 finding human remains, correct?

03:01:45 15 A. Correct.

03:01:45 16 MR. OAKES: Objection.

03:01:45 17 Q. Have you ever found a tooth?

03:01:50 18 A. No.

03:01:50 19 Q. Are you familiar with the decomposition of teeth in  
03:01:59 20 the human body?

03:02:01 21 A. Familiar as how?

03:02:02 22 Q. How they break down, what the chemical components  
03:02:05 23 are, are you familiar with that?

03:02:06 24 A. No, I am not.

03:02:07 25 Q. Are you familiar with the decomposition of chemicals

03:02:10 1 that make up the human body?

03:02:12 2 A. Yes.

03:02:12 3 Q. Okay, what chemicals -- how does the human body  
03:02:16 4 decompose? What chemicals?

03:02:18 5 A. The actual chemicals I -- I am not sure.

03:02:22 6 MS. BIANCO: No further questions.

03:02:25 7 THE COURT: Mr. Oakes, are you done?

03:02:27 8 MR. OAKES: We are. We're all set, Your  
03:02:29 9 Honor. Thank you.

03:02:29 10 THE COURT: You're all set, sir.

03:02:31 11 THE WITNESS: Thank you.

03:02:31 12 THE COURT: Next witness. Who is your next  
03:02:38 13 witness?

03:02:40 14 MR. OAKES: Jim Pietroski.

03:03:04 15 THE CLERK: Raise your right hand, left on the  
03:03:11 16 Bible.

03:03:12 17 J A M E S P I E T R O S K I, Called as a witness, having  
03:03:13 18 been duly sworn, was examined and testified as follows:

03:03:13 19 THE CLERK: Please state your name for the  
03:03:20 20 record.

03:03:20 21 THE WITNESS: James Pietroski.

03:03:21 22 THE CLERK: Spell your last name.

03:03:22 23 THE WITNESS: P-I-E-T-R-O-S-K-I.

03:03:25 24 THE CLERK: Have a seat please.

03:03:27 25 THE COURT: Mr. Pietroski, before you start

03:03:29 1           answering questions from Mr. Oakes, I'm going to ask  
03:03:31 2           you whether or not you consent to have your testimony  
03:03:33 3           audio and videotaped.

03:03:34 4                   THE WITNESS: No, sir.

03:03:35 5                   THE COURT: Thank you. Mr. Oakes.

03:03:39 6       DIRECT EXAMINATION

03:03:39 7       BY MR. OAKES:

03:03:40 8           Q.    Good afternoon, investigator.

03:03:41 9           A.    Good afternoon.

03:03:42 10          Q.    Where are you employed?

03:03:44 11          A.    Oswego County Sheriff's Office.

03:03:46 12          Q.    In what position?

03:03:48 13          A.    Criminal investigator.

03:03:50 14          Q.    How long have you been in that position?

03:03:51 15          A.    Six years.

03:03:52 16          Q.    Investigator Pietroski, are you familiar with a  
03:03:59 17       person by the name of William Pierce?

03:04:00 18          A.    Yes.

03:04:01 19          Q.    And how are you familiar with Mr. Pierce?

03:04:03 20          A.    I took a statement from him back in July of 2014.

03:04:08 21          Q.    And could you please describe for the Court the  
03:04:11 22       circumstances under which you came to speak with Mr.  
03:04:13 23       Pierce?

03:04:13 24          A.    He phoned in a tip regarding the Heidi Allen  
03:04:17 25       disappearance.

03:04:18 1 Q. Did you receive that tip yourself personally or did  
03:04:21 2 somebody else?

03:04:22 3 A. From somebody else.

03:04:23 4 Q. Was it passed along to you?

03:04:25 5 A. Correct.

03:04:25 6 Q. And based on that tip and receiving that tip, what  
03:04:28 7 did you do?

03:04:29 8 A. I telephoned Mr. Pierce.

03:04:31 9 Q. What happened?

03:04:33 10 A. We arranged for him to come in and meet with me at  
03:04:36 11 the Sheriff's Office.

03:04:38 12 Q. And what was the purpose of doing that?

03:04:40 13 A. He said he had some information about the Heidi  
03:04:44 14 Allen case so he was coming in so I could interview him and  
03:04:47 15 take a statement from him.

03:04:48 16 Q. And I'm going to direct your attention to July  
03:04:52 17 twenty-fifth, 2014. Were you working on that day?

03:04:54 18 A. Yes.

03:04:55 19 Q. And did you have contact with Mr. Pierce on that  
03:04:57 20 day?

03:04:57 21 A. Correct, yes.

03:05:00 22 Q. Where did that -- where did you initially meet Mr.  
03:05:14 23 Pierce, first make contact with him?

03:05:18 24 A. It was in the lobby of the Oswego County Public  
03:05:21 25 Safety Center.

03:05:21 1 Q. And did you guys stay in the lobby or move to  
03:05:23 2 another location?

03:05:23 3 A. We moved back to the criminal investigation room.

03:05:26 4 Q. And ballpark, approximately how long did you speak  
03:05:32 5 with Mr. Pierce?

03:05:33 6 A. Approximately an hour and a half to -- hour and a  
03:05:39 7 half probably.

03:05:39 8 Q. Can you generally describe to the Court what it was  
03:05:41 9 Mr. Pierce was telling you at this time?

03:05:43 10 A. He was describing --

03:05:45 11 MS. PEEBLES: Judge, objection. Hearsay.

03:05:48 12 MR. OAKES: Your Honor, this is being offered  
03:05:50 13 as rebuttal to testimony offered by the defense of Mr.  
03:05:53 14 Pierce.

03:05:53 15 MS. PEEBLES: He can't offer hearsay  
03:05:55 16 testimony.

03:05:55 17 THE COURT: I'll sustain it.

03:05:57 18 Q. Investigator, did you take a statement from Mr.  
03:06:02 19 Pierce at that time?

03:06:03 20 A. Yes.

03:06:04 21 Q. And who prepared that statement?

03:06:07 22 A. I did.

03:06:08 23 Q. And could you please explain to the Court where the  
03:06:12 24 information from that statement came from?

03:06:14 25 A. Mr. Pierce.

03:06:15 1 Q. And after you finished typing it, what did you do  
03:06:19 2 with that statement?

03:06:20 3 A. I gave it to Mr. Pierce to read over.

03:06:22 4 Q. Before doing so, did you ask him if he read or wrote  
03:06:27 5 English?

03:06:28 6 A. Yes.

03:06:29 7 Q. What did he say?

03:06:30 8 MS. PEEBLES: Judge, again, leading.

03:06:33 9 THE COURT: You need to ask in a non-leading  
03:06:36 10 fashion.

03:06:36 11 MS. PEEBLES: Just ask him what he did.

03:06:40 12 MR. OAKES: Thank you for the tip, Ms.

03:06:41 13 Peebles.

03:06:43 14 Q. What did you ask him about whether he read or wrote  
03:06:46 15 English?

03:06:47 16 A. I asked him if he could read or write English and I  
03:06:50 17 had him start reading the first line of the statement.

03:06:52 18 Q. Was he able to do so?

03:06:54 19 A. Yes.

03:06:55 20 Q. How long did he review the statement for?

03:07:01 21 A. Five minutes.

03:07:02 22 Q. Okay, what if any corrections did he ask to make to  
03:07:06 23 it?

03:07:07 24 A. I don't believe there was any corrections.

03:07:11 25 Q. I'm going to hand you what's been marked for

03:07:13 1 identification as People's Exhibit XX. Do you recognize  
03:07:18 2 that, Investigator Pietroski?

03:07:20 3 A. Yes.

03:07:20 4 Q. What is that?

03:07:21 5 A. That's the written statement I obtained from Mr.  
03:07:24 6 Pierce.

03:07:24 7 Q. Okay, and how do you recognize that?

03:07:28 8 A. 'Cause it has my signature on it.

03:07:33 9 Q. Okay, and is that identical to the original?

03:07:37 10 A. Yes.

03:07:38 11 Q. And with the exception of the exhibit sticker?

03:07:42 12 A. Yes.

03:07:43 13 Q. Okay, and is that a fair and accurate copy of the  
03:07:48 14 statement given by Mr. Pierce?

03:07:50 15 A. Yes.

03:07:50 16 MR. OAKES: Your Honor, at this time the  
03:07:52 17 People would offer Exhibit XX.

03:07:54 18 MS. PEEBLES: Objection. It's hearsay and  
03:07:56 19 it's inadmissible.

03:07:58 20 THE COURT: How are you getting around the  
03:08:00 21 hearsay?

03:08:01 22 MR. OAKES: Well, Your Honor, we're offering  
03:08:02 23 it to show that a defense witness previously gave a  
03:08:05 24 sworn statement at another date that's directly  
03:08:08 25 contradictory to the testimony that he's given.



03:08:11 1 MS. PEEBLES: First of all, that's not  
03:08:13 2 correct, it's not contradictory to the testimony that  
03:08:15 3 he gave, and he could have questioned Mr. Pierce about  
03:08:17 4 his sworn statement when he was up on the stand  
03:08:19 5 testifying, so through this witness it's completely  
03:08:21 6 inappropriate.

03:08:22 7 MR. OAKES: Well, Your Honor --

03:08:23 8 MS. PEEBLES: And it's hearsay and I would  
03:08:25 9 object.

03:08:25 10 THE COURT: It is hearsay. How are you going  
03:08:28 11 to get past the hearsay exception?

03:08:31 12 MR. OAKES: Your Honor, we're not offering it  
03:08:32 13 for the truth of the matter asserted, we're not  
03:08:34 14 offering it to show the truth of what Mr. Pierce said,  
03:08:36 15 simply and solely that he said something differently  
03:08:39 16 than what he said to this court when he testified.  
03:08:42 17 Your Honor, Mr. Pierce testified that he recognized  
03:08:48 18 James Steen as the person at the D & W parking lot on  
03:08:51 19 that day. He was shown a photograph that either was  
03:08:54 20 shown to him or he saw from a paper of James Steen in a  
03:08:58 21 jail outfit, and he testified that he was positive it  
03:09:01 22 was James Steen he saw. When he spoke with this  
03:09:03 23 investigator on July twenty-fifth in that sworn  
03:09:05 24 statement, he had indicated it was Gary Thibodeau that  
03:09:08 25 he saw at the D & W parking lot. It is absolutely

03:09:11 1 material, and again, we're not offering it to show --

03:09:14 2 THE COURT: Just because it's material doesn't  
03:09:16 3 mean you can bypass a rule of evidence.

03:09:18 4 MR. OAKES: Right. We are not offering it to  
03:09:20 5 show that it was in fact Gary Thibodeau. That would be  
03:09:22 6 for the truth. We're offering it to show that Mr.  
03:09:26 7 Pierce recently, and again within the year, gave a  
03:09:30 8 sworn statement that's directly contradictory to his  
03:09:32 9 testimony.

03:09:33 10 MS. PEEBLES: It's hearsay and it's  
03:09:34 11 inappropriate what he's doing. Mr. Pierce testified,  
03:09:38 12 he questioned him, he questioned him about the  
03:09:41 13 identification of James Steen, he admitted he didn't  
03:09:44 14 recognize Mr. Steen in the photo array. I would  
03:09:47 15 object. It's -- it's hearsay and it's inadmissible and  
03:09:51 16 it's improper to introduce it through this witness.

03:09:53 17 THE COURT: I'm going to keep it out.

03:09:57 18 Q. After July twenty-fifth of 2014 when Mr. Pierce gave  
03:10:24 19 you a sworn statement, did you speak with him again at some  
03:10:28 20 other time?

03:10:28 21 A. Yes.

03:10:29 22 Q. When was that approximately?

03:10:31 23 A. It was July thirtieth via telephone.

03:10:34 24 Q. July thirtieth of 2014?

03:10:36 25 A. 2014, correct.

03:10:37 1 Q. Do you recall what was the purpose, who initiated  
03:10:40 2 that phone call, Mr. Pierce or you?

03:10:42 3 A. I did.

03:10:43 4 Q. Why did you initiate that phone call?

03:10:45 5 A. Because he left a message on my answering machine so  
03:10:49 6 I called him back.

03:10:50 7 Q. Okay, and when you called him back, what if anything  
03:10:54 8 did he say to you?

03:10:56 9 A. That he was mistaken about his identification of the  
03:11:01 10 individual in his statement on the twenty-fifth.

03:11:05 11 Q. Okay. And I won't ask you what he told you on July  
03:11:12 12 thirtieth, but based upon what he told you, what did you  
03:11:15 13 decide to do with Mr. Pierce? What investigative technique  
03:11:19 14 did you decide to use?

03:11:21 15 A. I prepared a couple photo arrays to take to him so  
03:11:25 16 he could view them.

03:11:26 17 Q. Okay, and you said a couple of photo arrays. Is  
03:11:30 18 that two?

03:11:30 19 A. Two, yes.

03:11:31 20 Q. Why two?

03:11:32 21 A. Because there -- he's mentioning two different  
03:11:35 22 subjects so I prepared two different photo arrays with each  
03:11:38 23 subject in them.

03:11:39 24 Q. Okay, and who were those two different subjects?

03:11:41 25 A. Gary Thibodeau and James Steen.

03:11:43 1 Q. And when did he mention Gary Thibodeau?

03:11:46 2 A. In his original statement to me on the twenty-fifth  
03:11:49 3 of July, 2015, or 2014, sorry.

03:11:52 4 Q. And when did he mention James Steen?

03:11:55 5 A. July thirtieth, 2014 during that phone conversation.

03:11:59 6 Q. Do you recall when it was that you met with Mr.

03:12:02 7 Pierce to show him those photo arrays?

03:12:05 8 A. It was October twenty-eighth, 2014.

03:12:08 9 THE COURT: What day?

03:12:09 10 THE WITNESS: October twenty-eighth.

03:12:11 11 Q. And where did you meet with him?

03:12:13 12 A. At his residence. Actually outside his residence in  
03:12:17 13 his driveway in my patrol car.

03:12:18 14 Q. And investigator, again, if you are talking October  
03:12:22 15 twenty-eighth, so a few months had passed by since you  
03:12:25 16 spoke with him. Why a few months?

03:12:27 17 A. Because I had to -- it was difficult to obtain a  
03:12:31 18 photo of Mr. Steen back around the time of 1994 so I  
03:12:36 19 finally located one and then put the photo array together.

03:12:39 20 Q. Well, what was the purpose or why was it important  
03:12:42 21 to find a picture of Mr. Steen around 1994, that era?

03:12:47 22 A. I wanted to get a photo that represented him  
03:12:51 23 approximately the time of 1994 which Mr. Pierce is saying  
03:12:56 24 he allegedly saw him.

03:12:57 25 Q. Okay, and you said the second photograph array was

03:13:05 1 included which other person? You said the first was James  
03:13:09 2 Steen and the second one included who?

03:13:12 3 A. I believe the first one I showed him was of with  
03:13:15 4 Gary Thibodeau and the second one I showed him was with  
03:13:18 5 James Steen.

03:13:19 6 Q. Okay, I have the order backwards, I apologize. So  
03:13:22 7 you met with him on October twenty-eighth, you showed him  
03:13:25 8 two photo arrays?

03:13:26 9 A. Correct.

03:13:26 10 Q. And where were you when you showed him those?

03:13:29 11 A. We were sitting in my patrol car in his driveway on  
03:13:33 12 Gray Road, Town of Oswego.

03:13:35 13 Q. Investigator, first going to hand you what's been  
03:13:38 14 marked for -- actually what's been received as evidence as  
03:13:43 15 Exhibit EEE. Do you recognize that?

03:13:46 16 A. Yes.

03:13:46 17 Q. What is that?

03:13:47 18 A. It's the photo array with Gary Thibodeau in it.

03:13:51 19 Q. Is that the photo array that you showed to Mr.  
03:13:53 20 Pierce on October twenty-eighth of 2014?

03:13:55 21 A. Yes.

03:13:56 22 Q. And in showing that photo array to Mr. Pierce, was  
03:14:01 23 he able to identify any of the people in that photo array?

03:14:04 24 A. No.

03:14:05 25 Q. When I say identify them, identify that person as

03:14:10 1 the person he claims he saw at the D & W store April third  
03:14:13 2 of 1994.

03:14:14 3 A. No.

03:14:14 4 Q. I'm handing you what's been received into evidence  
03:14:19 5 as Exhibit DDD. What is that?

03:14:23 6 A. It's another photo array.

03:14:27 7 Q. Is that the second photo array you showed Mr.  
03:14:29 8 Pierce?

03:14:29 9 A. Yes.

03:14:30 10 Q. And who does that contain? Whose photograph does  
03:14:32 11 that contain of significance?

03:14:34 12 A. James Steen.

03:14:35 13 Q. And was Mr. Pierce able to recognize any of those  
03:14:40 14 individuals, any of those six individuals in EEE as the  
03:14:44 15 person he claims he saw on April third of 1994 at the D & W  
03:14:48 16 store?

03:14:48 17 A. No.

03:14:48 18 Q. Investigator Pietroski, looking at Exhibit DDD,  
03:15:23 19 where does James Steen appear in this photograph, what  
03:15:29 20 number?

03:15:29 21 A. He's in position number three.

03:15:32 22 Q. Okay, and for that photograph that appears in  
03:15:36 23 position number three, do you know when that photograph was  
03:15:39 24 taken or where did you obtain it from?

03:15:41 25 A. We obtained it from our records file cabinet in one

03:15:46 1 of our storage rooms.

03:15:47 2 Q. Okay, and do you know approximately when that was  
03:15:50 3 taken?

03:15:51 4 A. I believe it was July, 1988 or yeah, 1988, or I'm  
03:15:57 5 sorry, it's December, yeah, December, 1988.

03:16:01 6 Q. And for Exhibit EEE, you said Richard, I'm sorry,  
03:16:13 7 Gary Thibodeau appears in that photograph?

03:16:15 8 A. Yes.

03:16:16 9 Q. In what position number does he appear?

03:16:18 10 A. Number five.

03:16:19 11 Q. Okay. Now Investigator Pietroski, again looking at  
03:16:26 12 Exhibit DD, I'm sorry, DDD, you said the photograph of  
03:16:31 13 James Steen was from 1988?

03:16:33 14 A. Correct.

03:16:33 15 Q. And that's six years before the incident in  
03:16:37 16 question. Why didn't you use a photograph closer to 1994?

03:16:42 17 A. 'Cause I couldn't find one.

03:16:45 18 Q. That's the closest available one you had?

03:16:47 19 A. Yes.

03:17:07 20 MR. OAKES: No further questions, Your Honor.

03:17:08 21 THE COURT: Ms. Peebles?

03:17:09 22 MS. PEEBLES: Yes.

03:17:11 23 CROSS-EXAMINATION

03:17:12 24 BY MS. PEEBLES:

03:17:13 25 Q. I'm going to hand you what's been marked as Defense

03:17:30 1 Exhibit DDD, and you just identified Mr. Steen as the third  
03:17:35 2 person?

03:17:36 3 A. Um hum.

03:17:36 4 Q. Number three, and you would agree with me that he  
03:17:40 5 doesn't have any facial hair on -- in that photograph?

03:17:45 6 A. Looks like he's got a faint mustache.

03:17:48 7 Q. Any kind of a beard?

03:17:50 8 A. No.

03:17:50 9 Q. In fact, is it fair to say he almost has what  
03:17:53 10 appears to be a baby face in that photograph?

03:17:55 11 A. Yes.

03:17:55 12 MR. OAKES: Objection as to characterization,  
03:17:57 13 Your Honor.

03:17:57 14 THE COURT: I think I have an idea of what a  
03:18:00 15 baby face is. I'll allow it.

03:18:01 16 Q. Yes?

03:18:02 17 A. Yes.

03:18:02 18 Q. And did it ever occur to you to try to get a  
03:18:07 19 photograph of Mr. Steen in 1994 from any of his family  
03:18:10 20 members?

03:18:13 21 A. Yes.

03:18:14 22 Q. Did you talk to any of his family members?

03:18:16 23 A. No.

03:18:16 24 Q. So you didn't ask any of his family members whether  
03:18:20 25 or not there was a photograph of him depicting him in 1994?



03:18:23 1 A. No.

03:18:23 2 Q. In fact, is it fair to say that that photograph  
03:18:31 3 number three depicting Mr. Steen and the array there  
03:18:34 4 doesn't look anything like him today?

03:18:37 5 A. Correct.

03:18:39 6 Q. Take that back.

03:18:48 7 MS. PEEBLES: No further questions.

03:18:50 8 THE COURT: Sir, I'm sorry, Mr. Oakes?

03:18:57 9 REDIRECT EXAMINATION

03:18:58 10 BY MR. OAKES:

03:18:58 11 Q. The photograph of Mr. Steen on DDD, where did you  
03:19:06 12 obtain that from?

03:19:06 13 A. From our files from a -- it's a file cabinet with a  
03:19:11 14 bunch of photographs in it.

03:19:12 15 Q. The photographs of the other five men who appear in  
03:19:17 16 DDD, where did those photographs come from?

03:19:20 17 A. Same location.

03:19:21 18 Q. And for the six photographs that appear in EEE,  
03:19:25 19 where do those come from?

03:19:27 20 A. The same location.

03:19:28 21 Q. Investigator Pietroski, does the term suggestibility  
03:19:36 22 have meaning when you're doing a photo array?

03:19:38 23 A. Yes.

03:19:39 24 MS. PEEBLES: Objection. Beyond the scope.

03:19:40 25 MR. OAKES: It does relate, Your Honor.

03:19:42 1 THE COURT: How?

03:19:43 2 MR. OAKES: Well, counsel's asking why he  
03:19:45 3 didn't use a picture from a family photo. Again, it  
03:19:48 4 would not be the same as a booking photo and it would  
03:19:51 5 stand out like a sore thumb when you put it in a photo  
03:19:54 6 array.

03:19:54 7 THE COURT: If he can testify to that I'll  
03:19:56 8 allow it based on the question, the family question.

03:19:59 9 Q. Based upon the question from counsel, you said you  
03:20:02 10 didn't obtain a photograph from family members. Why not  
03:20:06 11 use a family photo as opposed to booking photo?

03:20:09 12 A. Because I want to compare similar photos.

03:20:12 13 Q. Why's that important?

03:20:13 14 A. So one does not stick out. So he doesn't pick out  
03:20:17 15 one other than the other because it sticks out because it's  
03:20:20 16 different from the other -- other five.

03:20:22 17 Q. So is it fair to say that you want all the  
03:20:25 18 photographs to be of a similar nature, color, era?

03:20:30 19 MS. PEEBLES: Objection, leading.

03:20:31 20 THE COURT: Sustained.

03:20:31 21 Q. What's the significance of having photographs from  
03:20:33 22 the same era or time frame?

03:20:35 23 A. So they will look the same. They're in black and  
03:20:38 24 white, color, I want them to be the same.

03:20:46 25 MR. OAKES: No further questions, Your Honor.

03:20:47 1 MS. PEEBLES: Just one or two.

03:20:48 2 THE COURT: Let me finish writing.

3 (Whereupon, there was a pause in the  
03:21:09 4 proceeding).

03:21:09 5 THE COURT: Ms. Peebles, go ahead. Thank you.

6 RECROSS-EXAMINATION

03:21:11 7 BY MS. PEEBLES:

03:21:11 8 Q. So is it your testimony that had you not had a  
03:21:14 9 booking photo of Mr. Steen, you wouldn't have been able to  
03:21:18 10 put him in a photo array in order to show Mr. Pierce?

03:21:23 11 A. I would have had to get other similar photos  
03:21:26 12 depicting other people.

03:21:27 13 Q. And --

03:21:28 14 A. With similar characteristics.

03:21:30 15 Q. And where do you think you would have found one if  
03:21:33 16 he hadn't been arrested in 1988?

03:21:36 17 A. Of Mr. Steen?

03:21:37 18 Q. Yes, correct.

03:21:41 19 A. I would have looked for booking photos.

03:21:43 20 Q. Okay, my -- my question is had he not ever been  
03:21:46 21 arrested --

03:21:48 22 A. Um hum.

03:21:48 23 Q. -- where would you have gotten a photograph for  
03:21:50 24 purposes of showing Mr. Pierce?

03:21:52 25 A. I probably wouldn't have gotten a photograph.

03:21:55 1 MS. PEEBLES: No further questions.

03:22:00 2 THE COURT: Mr. Oakes, you set?

03:22:01 3 MR. OAKES: All set, Your Honor.

03:22:02 4 THE COURT: Mr. Pietroski, you can step down  
03:22:04 5 please. Who is your next witness?

03:22:06 6 MR. OAKES: It's going to be Investigator Dale  
03:22:08 7 MacDonald, Your Honor.

03:22:09 8 THE COURT: How long?

03:22:12 9 MR. MOODY: I don't think he'll be that long.  
03:22:15 10 He basically as I mentioned yesterday --

03:22:17 11 THE COURT: I don't care -- I don't care if he  
03:22:19 12 goes until four, but is he going to be able to be  
03:22:22 13 cross-examined before four because we're going to have  
03:22:24 14 a week break.

03:22:25 15 MR. MOODY: Yes, he's -- basically as I  
03:22:27 16 mentioned the other day, he's an evidence technician.  
03:22:29 17 What I had him do is in order to -- to verify the green  
03:22:32 18 marks that are on the original Sheriff's Department  
03:22:34 19 file, I had him make color copies and then seal them up  
03:22:37 20 in bags. I don't -- I think we'd be able to be done by  
03:22:41 21 four but I can't -- I can't --

03:22:42 22 THE COURT: Ms. Peebles, do you want to  
03:22:43 23 risk -- it's up to you.

03:22:45 24 MS. PEEBLES: I would rather not risk it  
03:22:47 25 because I don't think we've moved along that quickly.

03:22:50 1 and if we're going to get into this green marker issue,  
03:22:53 2 I think it may take longer than a half hour.

03:22:55 3 THE COURT: It's unfair to the defense if  
03:22:57 4 she -- if the defense can't finish her cross.

03:22:59 5 MR. MOODY: I don't believe he's going  
03:23:00 6 anywhere the week of April seventh so I think we're  
03:23:03 7 fine.


03:23:03 8 THE COURT: It has been confirmed we can start  
03:23:05 9 at 8:45 on the seventh, okay, so we're adjourned until  
03:23:11 10 8:45 on April seventh.

11 (Conclusion of Proceeding).

12 \* \* \*

13 C E R T I F I C A T E

14 I, JENNIFER ADYDAN, an Official Court  
15 Reporter in and for the State of New York, Fifth  
16 Judicial District, do hereby certify that the foregoing  
17 is a true, complete and accurate transcript of my  
18 stenographic notes taken in the above-entitled matter  
19 and the whole thereof to the best of my ability.

20  
21   
22 Jennifer Adydan  
Official Court Reporter

23 DATED: April 1, 2015  
24  
25